Supreme Court, U.S.
FILED

02157 6 APR 2 8 2003

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No. _____

IN THE

Supreme Court of the United States

VERA NIGRO

Petitioner(s)

V.

U. S. FEDERAL LABOR
RELATIONS AUTHORITY

On Petition For Writ Of Certiorari
To The U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the presumptive non-reviewability of the Federal Labor Relations Authority (FLRA) in their decisions not to issue Unfair Labor Practices (ULP) should be revoked, and revised to make new law whereby, such decisions by FLRA (not to issue ULPs) would be recognized as decisions for proper review by the Courts of Appeals, especially when adverse actions are part of the case brought before the Authority ?

2. Whether the non-reviewability of FLRA decisions not to issue ULPs are unconstitutional (interfere with due process, etc.) and are a detriment to Federal Employees, their rights particularly of due process, (to include investigation methods [as witness interviews] and equal protection under the law.

3. Whether, unfair proceedings, errors, especially gross errors, and arbitrary conduct and acts , by the FLRA (deliberate, or not) are unconstitutional and wrongfully deny and interfere with Petitioner and federal employees receiving full rights and proper adjudication and remedies on their claims against government agencies and unions ?

4. Whether the non-reviewability of the Federal Labor Relations Authority (FLRA) in their decisions not to issue Unfair Labor Practices (ULP), is unconstitutional, when Courts of Appeals cannot review such determinations, and more so when, the Appeals Court fails to assert proper jurisdiction in cases which non-reviewability does not apply ?

5) Whether the FLRA misused its position and authority, by failing to act reasonably, failing to act in good faith, failing to apply reasonable standards and proper statutory interpretations and failing to ensure proper regulation and statutory compliance and/or did FLRA act in excess of its delegated powers contrary to the act and the Constitution, which wrongfully promoted abuse against Petitioner and other federal employees?

6) Whether the FLRA misinterpreted the statute at 7102 and 7116 and acted unreasonably and/or outside the bounds of reasonableness, committed gross errors and as such rendered unreasonable arbitrary, and capricious decisions in these cases in violation of applicable law and statute in which the Court of Appeals should have asserted jurisdiction for review over?

Related questions incorporated.

PARTIES TO THE PROCEEDING

All parties to the proceedings appear in the caption of the case on the cover and we also include the United States.

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OPINIONS BELOW

The opinions/ orders of the Court of Appeals for the 4th Circuit denying rehearing and rehearing enbanc is reported in Appendix at Pet. App. 1-9. The opinion/ orders of the Court of Appeals for the 4th Circuit concerning judgment is reported in Appendix at Pet. App. 1-9.

JURISDICTION

The judgment of the Court of Appeals for the 4th Circuit was entered on November 25, 2002. The petition for rehearing and rehearing enbanc was denied on January 28, 2003. The jurisdiction of this Court is invoked under *28 U.S.C. 12547,* further *28 U.S.C. 2403* (a) may apply.

CONSTITUTION, STATUTE, AND REGULATION INVOLVED

The *Fourteenth Amendment to the United States Constitution* provides *" All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law:; nor deny to any person within its jurisdiction the equal protection of the laws.*

" Federal Government employees working for the United States government, assert that the Constitution is suppose to apply to

them and its full force and effect apply even when they walk through the workplace doors everyday, and engage in the use of the administrative processes within the federal government.

The Federal Statute at issue is the *Federal Service Labor Management Relations Statute (FSL-MRS), 5 U.S.C. 71* as it fails to meet the minimum requirements of due process and equal protection in that it does not provide all federal employees fair proceedings and proper remedies and deprives parties of due process, equal protection, property, liberty and life rights which it should not. Even more, it does not protect parties making complaints to the Authority, from deliberate gross errors, and non-standardize processes which are created and performed arbitrarily by some Regions and Counsel of the FLRA, which cause the wrongful non-issuance of a ULP. Further, the statute does not provide all aggrieved parties rights to the same reviews and remedies.

5 U.S.C. 7123. JUDICIAL REVIEW; ENFORCEMENT

"(a) Any person aggrieved by any final order of the Authority other than an order under-

(1) section 7122 of this title (involving and order by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or.....may, during the 60 day period beginning on the date on which the order was issued, institute an action for judicial review of the

Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia."

5 U.S.C. 7118

"(a) (1) If any agency or labor organization is charged by a person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint; the General Counsel shall provide the person making the charge a written statement for the reasons for not issuing the complaint.

5 U.S.C. 7116 is reported in Appendix at Pet. App. 96-100

PROCEEDINGS BEFORE THE COURT OF APPEALS

The aggrieved status for the Petitioner which brought her before the Court of Appeals, came from the final decision(s) and order(s) in these case(s) issued by the Federal Labor relations Authority, (FLRA), in *WA-CA-00652,* Vera Nigro V. Internal Revenue Service, (IRS) on July 9, 2002; *WA-CO-00653*, Vera Nigro v. National Treasury Employees Union, (NTEU), on July 10, 2002; *WA-CO-01-00631*, Vera Nigro v. National Treasury Employees Union, (NTEU), on July 11,2002; and, *WA-CO-0l-0035*, Vera Nigro v. National Treasury Employees Union, (NTEU), on July 9, 2002.

On September 4, 2002 the Petitioner (Ms. Nigro) pursuant to *5 U.S.C. 7123*, filed a timely petition for review within 60 days, with the U.S. Court of Appeals for the 4th Circuit. Questions concerning FLRA, the Statute and Constitution were raised by petitioner to the Court of Appeals and the constitutional validity of surrounding statutes which rely on FLRA. The FLRA (Respondent) filed a

(9 27 02) Motion to Dismiss the petitions on lack of jurisdiction based on an assertion of non-reviewability. Petitioner filed a (10 7 02) Opposition Motion to the FLRA's Motion to Dismiss citing the Court had jurisdiction based on the nature of the issues presented in the petitions, particularly that they were distinguishable from other cases. The FLRA filed a reply to the Petitioners Opposition Motion and said they could make all the errors they wanted. Petitioner replied to FLRA's reply in 10 22 02 citing case which demonstrated errors can and should be challenged and reviewed by the Court of Appeals. The Appellate Court thereafter denied the petitions for review without comment on November 25, 2002. The Petitioner then filed for a rehearing and rehearing enbanc. The Appellate Court without review or comment denied rehearing and rehearing enbanc on January 28, 2003.

The Court of Appeals had jurisdiction based on construction of the Statute (*5 U.S.C. 71*), Congressional intent, to include section 7123, and related exceptions, the Constitution, and through cause for the establishment of new law and/or a moderate change to existing law, but declined to assert jurisdiction.

STATEMENT OF THE CASE

These cases arose out of the FLRA engaging in a pattern of improper acts to undermine and derail the Petitioner's cases and her related co-complainant's cases. All in relation to the pattern of abuse and hostility the Petitioner's and her co-complainants, were facing from the IRS and NTEU working together to adversely affect these individuals. The pattern of improper acts talked of

include the FLRA undermining the cases (not investigating, not taking information, not interviewing witnesses, etc.), failing to assert proper jurisdiction, failure to assert/ enforce the statute at *7116 (a) and (b),* and related law *Vaca v Sipes* at a minimum, and remedy to the Petitioner's cases and her co-complainants cases up to and including the FLRA failing to issue ULP's in those matters. These cases are distinguishable from other cases and the events and circumstances in those cases on the issue of non-reveiwability of FLRA in these matters.

Brief historical facts

In relation to the cases concerning the IRS (those are prefixed with WA-CA). The IRS had always attacked and threatened Ms. Nigro's employment with the Service over her union activities dating back to 1992 when she came to National Office IRS. Ms. Nigro previously used administrative processes against the IRS in those matters with none of the problems she faced from FLRA in the current issues at hand. Ms. Nigro's issues were settled and/or won against IRS management.

In relation to the cases against the NTEU, both National and the Local Chapter 65, are prefixed by WA-CO-. Ms. Nigro was once removed as a Steward by the Local Chapter President, prior to Jerry Feith, and whom Calvin Pollard (the Chapter President talked of in case *WA-CO-01-0035* supported); because she opposed that President, not bargaining over employees working conditions, and because that President was closing out employee grievances behind their backs. Finally, Nigro was told "she was being mean to management by filing and processing grievances against them". This Chapter President, was subsequently removed by the

membership for his non-negotiaition policies and wrongful closing of employees grievances, in and around 2/1996. During the 2/1996 membership proceedings it was disclosed to Ms. Nigro by affiliates of the National NTEU that they did not want Jerry Feith as President of the Chapter 65, that National NTEU wanted to have an election so they could put Calvin Pollard in office instead. Ms. Nigro did not agree with candidate picking and was an opponent against Pollard and ran on the Feith ticket instead.

More significant tensions between the IRS, National NTEU and Nigro began in 8/1997 when the then National NTEU President told Nigro and other union officials that they (the National Office Employees) were "toast' in relation to a planned Reduction in Force (RIF) at IRS. They were also told, they'd better not fight, because there was nothing they could do about it. Nigro and the other union officials (of the Feith/Nigro Administration) took exception to the comments and more differences began to arise between them and
National NTEU and IRS over these parties policies towards employees.

In 1999 National NTEU was removed as the exclusive representative from the Pension Benefit Guaranty Corporation (PBGC) in D.C., for engaging in similar hostile and improper actions (like those we talk about and assert in these petitions, i.e. case/ arbitration dumping) towards those employees of PBGC. FLRA was informed of these matters.

Facts:

The cases of Ms. Nigro came about in conjunction and in relation to a series of cases over hostilities and threats upon

Petitioner and some of her IRS co-workers. The cases were sent to the Washington D.C. Regional Office of the FLRA. The related Unfair Labor Practices (ULP's) began over a threat made on September 1, 1999 by Mr. Ferris, the National Executive Vice President of NTEU stating the mother union was out to get rid of these particular local officials of which Ms. Nigro was one. These particular local Chapter officials Jerry Feith, Vera Nigro, John Laird oppose the mother union's failure to better represent employees: they opposed National NTEU stated policies of "Partnership" with IRS, (when the employer is just constantly attacking employees); they oppose Ms. Kelley's support of Al Gore (whom we said was only harming and downsizing the government employees) ; they oppose new awards agreement for Employees, (that would take money out of members pockets, and it has. Members now receive about $ 438.00 less); they oppose the wrongful imposition of Section 1203 on employees, and the National NTEU telling us don't make waves over such issues and disagreed because it could cost federal employee jobs; they oppose the IRS Reorganization (and how we said it was not going to work properly and hasn't); and they opposed Mr. Rossotti (IRS Commissioner) not divesting himself which was improper, to name a few items. Nigro was also an opposing candidate to Ms. Kelley and Mr. Ferris in the August 1999 National Union Elections, the individuals that later made the threats. (See Appendix Pet App. 80-91 Laird case sample *WA-CO-00308*). After these threats were made by the Executives of the National NTEU, consultation was sought by the Petitioner with the Boston Region of the FLRA. Upon their recommendation (the Boston Region's), that such an outrageous threat should be documented and would most likely result in further adversity to the threatened parties, it was recommended ULP's be filed to document the events from that

point on. Ms. Nigro began filing ULPs and assisting others in filing ULPs after this event based on that recommendation.

Philosophical differences became more heated as the IRS increased its hostilities against employees. After the comments made by the NTEU on September 1, 1999 it definitely appeared the Agency felt it was open season on Feith, Nigro, Laird, and those who openly supported them. It was also clear the agency was using its position to create adverse conditions for employees and not resolving issues or negotiating. It was clear IRS and NTEU wanted Feith and Nigro out.

Issues between the IRS and NTEU became even more intense after Nigro was adversely affected by illegal actions levied (irrational suspension, then removal from her Computer Specialist Position, at that time, in February 2000 during the height of many of the issues) on her by the IRS with clear NTEU involvement. (See Appendix, Pet. App. 10-83 for case like Denise Crisco and the sampling of the John Laird cases).

Differences/ issues further heated up between Nigro and the NTEU,specifically, Colleen Kelley, Kim Mosely and John Mc Eleney, after Ms. Nigro brought to Ms. Kelley in April 2000, the concerns of her members, who felt National NTEU was not representing them properly. Nigro asserted to Kelley she wanted better representation from the National NTEU. Nigro based her request on input from members and issues and events she had observed. Kelley wanted Nigro to help her eliminate arbitration cases National NTEU had invoked for Chapter 65, and Nigro would not and did not agree to the union closing already invoked arbitration cases. Nigro also informed Kelley she disagreed with her policy on "Partnership", "Awards", and Al Gore.

After the April 2000 meeting, National NTEU representatives Moseley and Mc Eleney then set out to derail employee cases in Chapter 65 and interfere with Chapter Operations. Ms. Nigro resisted and the other employees who were being affected resisted and as was recommended after the threat of September 1, 1999, the Petitioner's and her co-complainant's filed ULP's with the FLRA in D.C. (See Appendix, Pet App 80-95 Crisco Case).

Start of Washington D.C. FLRA actions

The first case in which the series starts *WA-CO-00308* was met with hostility and illegal means of closing by the (D.C.) FLRA agents. The Regional agent went into a fit of anger upon a witness speaking up, and then the Regional Director tried to close the case down under a pretense of non-cooperation because the complainant (John Laird) vacated the room in fear of being attacked by the agent. The Regional Director apologized and said what happened to Mr. Laird was wrong, but he still dismissed the case (See Appendix, Pet. App. 78). The case was appealed and reopened 12/00 for investigation. Case *WA-CO-00308,* was significant as it was here the National NTEU made its threats of removal known towards Mr. Feith, Ms. Nigro and Mr. Laird, but it also showed a premeditation by the FLRA towards the complainants. This first case which set the stage has been the last one they processed 8/02., it should have been the first one they processed, but this does show a demonstrated manipulation of case processing to disadvantage Ms. Nigro and her other co-complainants.

In the Fall of 2000 new FLRA agents were on the cases. The new FLRA Regional Agents created an agreement with the complainants involved in the cases Ms. Nigro, Mr. Laird,

Ms. Crisco, Ms. Hatch, Ms. Mack, etc. to combine the 30 some cases involved and to use each case as evidence for the other and use the background evidence supplied by Ms. Nigro, concerning the documented facts of hostility by the union and the employer against these individuals. That the totality of the circumstances would be evaluated and that no case would be closed until all cases were investigated.

In Winter 2000 during the taking of testimony for the cases the agents began hinting to Ms. Nigro and other co-complainants involved in the cases, that the Regional Director was not going to let these cases go forward, but the agents said they were processing as originally agreed upon in a totality of all cases filed.

In and around Spring of 2001 before all the cases were investigated or all the information for the cases was collected, and any of the witnesses were interviewed, the complainants (including the Petitioner) had to force agents to even take information, and were being consistently faced with the agents refusal to do their jobs. Amidst all this; the Regional Director began closing the cases, in an unsequenced unrelated manner. (See Case list in Appendix.
Pet App. 106).

The Petitioner and her co-complainants were shocked, and the Washington Region would not tell them what was going on. It was clear something was wrong, that the cases were being closed without benefit of consideration of the other information relevant to each of them, nor the benefit of the background documentation that was given for each of them, nor witness testimony. The Region was merely dumping the cases, rubber stamping the wishes

matters, (See Appendix, Pet. App. 10-95 Crisco, Laird and Nigro cases samples). The closings further demonstrated that the information for the cases was not being applied, used or considered, nor were the witnesses being interviewed. These events were documented in the Petitioner's appeals to the FLRA's Office of General Counsel (OGC) and her co-complainants appeals to the OGC, (See Appendix at Pet. App. 101-106). These issues came out in the appeals of these cases. The problem was, that the actions of the Regional Office automatically created disadvantaged appeal circumstances for all the complainants, which should not have existed. Appeals began on the 30 cases that spring.

FLRA made Ms. Nigro and the other complainant's related to her cases, agree the 30 cases would be merged and worked in a totality of the circumstances fashion. The FLRA after securing this agreement and then seeing the complaint's including Ms. Nigro were coming forward with evidence, witnesses and testimony against the ill deeds of the IRS and NTEU in what they find was collusion of those parities, then made changes to the stated investigation plans to undermine the cases. Again the FLRA would not interview witnesses it said it would, would not take evidence, started closing cases so evidence could not be put on the record, decided behind the backs of the complaints to work each case separately and not consolidate them to ensure evidence would be missed. (See Appendix, Pet. App. 102-106).

The acts by the FLRA undoing the case processing agreement, deliberately being hostile and abusing their authority in trying to create technical glitches to close down the complainants cases. Then FLRA deliberately not investigating, not taking evidence from the complainants, deliberately not interviewing witnesses

which supported the complainant's assertions and charges, the using of unsworn statements of the NTEU or IRS over the complainants and then closing down the cases to merely reflect the wishes of the NTEU and/or IRS over the complainants and not giving the complaints the proper opportunity to respond to NTEU and IRS assertions; clearly shows the premeditation, abuse of discretion against the Petitioner and her co-complainants, by the FLRA.

The history of the cases shows clearly that the FLRA deliberately manipulated the law, failed to apply the statute. Then tried to create conditions for these individuals which did not exist. Tried to create unreachable standards to ensure these complainants could not achieve them, and all decisions made by FLRA, were fruits of the poisoned tree called manipulated case and investigatory processing. Further, the complainants have no true knowledge that their cases were even worked by the FLRA since all they received were a generic letters. A generic inconclusive letter does not demonstrate these complainants (Ms. Nigro, etc.) ever received proper consideration or due process as intended by Congress in the creation of these FLRA administrative processes. Therefore, the FLRA can not assert that it performed its duty and therefore, we assert they are reviewable by the Appeals Court.

The Supreme Court can see that the FLRA'S usual non-reviewable arguments should not apply in these cases. The cases are distinguishable and come under different circumstances than the other cases which have come before this Court and other courts in the past concerning the non-reviewability matter. These cases require the Supreme Court's review and a modification to the law of non-reviewability.

The Court of Appeals for the 4th Circuit departed from cases and laws which determined such review was warranted by them.

The current dispute

The above issues are incorporated as part of the current dispute and it arising.

Ms. Nigro's main ULPs (*WA-CA-00652* and *WA-CO-00653*) came about after it was disclosed to her that the IRS and the NTEU were plotting her removal from her Computer Specialist Position, at that time, from the IRS Work place and the Union. Ms. Nigro's cases were filed over that asserted suspension and firing plot, (see cases *WA-CA-00652* and *WA-CO-00653*). Further *WA-CO-01-00631* was filed after Ms. Nigro tried to find out why her union was not arbitrating her seven (7) arbitrations concerning her illegal adverse actions but could not. It was clear the National NTEU proceeded to continue to carry out their part of the disclosed plot and continued harm against Ms. Nigro, by not arbitrating her cases.

Finally, *WA-CO-01-0035* was filed when the IRS/ NTEU used the fabricated adverse personnel actions to attack Ms. Nigro and harm her character in the workplace by publishing Ms. Nigro's personal information all over IRS websites Nationwide, and then NTEU used Ms. Nigro's personal information in campaign posters as the main issue for their selected candidate, Calvin Pollard (National NTEU's favored candidate, see Brief historical facts). This was the information Pollard chose to use to win in his campaign for the local Chapter 65 election that spring to fall, 2000.

The FLRA in their decisions not to issue ULPs were arbitrary and went against rationality. The FLRA demonstrated on Ms. Nigro's cases they were not impartial and misusing their authority and position when they failed to investigate and used an after the fact fabricated story by NTEU in harming Ms. Nigro and interfered with her adjudicating her claims. The FLRA, helped to cover up the NTEU's collusion with IRS against Ms. Nigro by their actions. The FLRA's decision from the Regional Director was fraught with bad faith actions, and did not reflect the issues which were presented in the case. Such activity is not the intent of Congress when creating the statute nor the FLRA and giving such power to the FLRA. The same can be said for the other cases which were to be combined into Ms. Nigro's, those of Mr. Lairds, Ms Crisco's, Ms. Hatch's, (see Appendix, Pet App. 10-83).

REASONS FOR GRANTING THE WRIT PETITION

The U. S. Court of Appeals decided an important questions of Federal Law that, has not been, but should be, settled by the Supreme Court, and or decided an important federal questions in a way that conflicts with relevant decisions of this Supreme Court and other Courts to include, the 4th Circuit departed from their own and usual course of judicial proceedings. Further, opinion/order of the 4th Circuit Court of Appeals is in conflict with decisions of the U.S. Supreme Court, other Courts, and the conflict is not addressed in the opinion. Moreover, a change in the law which occurred after the case was submitted was overlooked by 4th Circuit.

The instant Writ Petition involves one or more questions of exceptional importance as Petitioner's case is based upon constitutional challenges, claims and grounds and urgency, due in part to petitioner's fundamental right to liberty, property and due process being abridged by acts, and errors of NTEU, IRS and FLRA as set forth in the petitions to the 4th Circuit, those exhibits and other documents entered for the cases. The petitions to the 4th Circuit and now to the Supreme Court contain constitutional claims. The claims and questions of exceptional importance which should be and can only be answered by this Supreme Court, and which affords this court jurisdiction over such claims are: Those listed on page i and below.

1) Actions and errors in administrative processes, which impeded due process and equal protection for Petitioner and other federal employees are unconstitutional and in direct conflict with the U.S. Constitution. Petitioner asserts federal employees should be able and should have the right to challenge statutory process, all procedural errors, government agencies and their opinions/ decisions and federal statutes which interfere with, denies, or obstructs his/her constitutionally protected federal protected rights.

2) Federal employees rights must be expanded to ensure better and more effective avenues of adjudication of their claims, because federal employees are wrongfully suffering deprivation at the hands of federal unions and the administrative processes in the federal government.

3) That the public interest demands due process and equal protection for federal employees in all areas.

The Appeals Court's decision order is contrary to the Civil Service Reform Act and the Constitution of the United States; more specifically the Due Process and Equal Protection Clauses of the 14th Amendment; and the decision of the Appeals Court directly conflicts with the United States Supreme Court in cases *as 470 U.S. 821. Mc Culloch 376 U.S. 473, 358 U.S. 184442 U.S.114 489 U.S.529. 421 U.S. 560 the Constitution 14th amendments the CSRA of 1978 and other court decisions as Fay V Douds. FEC v Atkins, Judge Williams. 131 U.S. App. D.C. 55.735 Sunp 1069.251 U.S. App. D.C. 239. Griffith. Surrat Templeton. Baher. Boire. Chicago v. NLRB. 633 F. 2d 1079. Mc Nary. Airforce v. FLRA. Ral 2429.11:5 U.S.C. 7123* at a minimum, and the conflicts are not addressed in the opinion. The reasons that follow also show the Appeals Court did have jurisdiction and could have asserted jurisdiction.

The Appeals Court's decision is inconsistent with the Constitution at 14th Amendment, because it did not provide due process and equal protection under the law to the Petitioner. Further, the Appeals Court's decision is inconsistent, because constitutional rights (federal rights) are at stake, challenged and claimed by the Petitioner. The Petitioner showed that FLRA has abrogated it responsibility by ignoring constitutional claims of the petitioner during her cases, similar to Kyne. Surratt and Templeton. Under such declarations the 4th Circuit declared in 633 F. 2d 1079 it would be compelled to act, but did not. The Appeals Court's decision is further inconsistent because gross errors are reviewable by the Court, especially when they interfere with due process, especially in adverse action cases, Judicial involvement, is open for "instances of constitutional dimension or gross violation of the statute" *131 U.S. App D.C. 55 and the Kyne* exception and the

Constitution as FLRA's actions and errors are reviewable, because they block federal employee due process, and property interests and frustrate the purpose of which the Act was to counter.

Our claims above are supported because the Supreme Court found in *Leedom,* courts may assert jurisdiction when a clear and mandatory provision of the Act is violated by the agency. The agency acts without statutory authority and its interpretation of the statute is flawed. Petitioner showed these were the actions by FLRA with regards to her case and in light of the direct evidence she put forward from other Supreme Court cases the Appeals Court should have asserted jurisdiction. More support was found as the Supreme Court also held that a district court could exercise jurisdiction over general due process challenge to Immigration and Naturalization Service's administration "Special Agricultural Worker" status, even though the controlling statute made individual status determinations unreviewable, *Mc Nary 498 U.S.*

Further, Jurisdiction can be had when an order of the Board is made in excess of its delegated powers and contrary to the Act. *358 U.S. 184*

Ms. Nigro's constitutional challenges that she has been denied due process under the 14th amendments with respect to adverse actions. That the Constitutional challenges she brings forward are for the good of all current and future federal employees, the issues affect all federal employees in receiving due process before they are adversely affected and have their property, liberty interests restrained and interfered with. That federal employees have property interest in their jobs, and that federal employees are being denied and/or having their due process denied and obstructed by

improper acts and/or errors in these federal administrative processes. Over such matters which interfere with federally protected rights, the Court can assert jurisdiction. CSRA (1978). Respondents also satisfy constitutional standing requirements. Their inability to obtain due process meets the genuine "injury infact" requirement that helps assure the court will adjudicate "a concrete living contest between adversaries~. FEC V. Atkins, Con gress did not intend to cut off constitutional claims, Judge Williams.

Congressional intent is to ensure due process and that the government agencies and Courts should look to ensure due process and equal protection is upheld for federal employees. Petitioner raised due process and constitutional claims to FLRA in her ULPs and to the 4th Circuit. Constitutional claims are a main function for the agency to under take, but FLRA did not. The Supreme Court has held that a colorable claim that the agency's refusal to institute proceedings violated constitutional rights. *470 US. 821.* Further, that most of the law in this area is based on Congressional intent, and it is Congressional intent that there be more latitude in these areas of administrative processes which affect federal employees.

A Court has jurisdiction over constitutional claims and issues. CSRA (1978). These petitions have always raised and cited such claims, see petitioners ULPs and Court filings and exhibits. The District court has jurisdiction of a cause of action that asserts a violation of constitutional rights, *Fay.* Federal courts have equity powers and can assert them in this case as the questions and claims raised meet the outlined test; public questions particularly high in the scale of national interest because of the international

complexion, Mc Culloch; where there is a substantial showing that Board action has violated the constitutional rights of the party,~ Douds.

A Court has jurisdiction over unreasonable and outlandish interpretations, even in the course of the alleged non- enforcement decision. Whenever it can be said that an erroneous assessment of the particular facts before the Board has led it to a conclusion which does not comport with the law, judicial review is to the Court of Appeals, *Boire.*

Further, a Court has jurisdiction to review when there is no decision rendered as determined by the Supreme Court in *Bachowski.* Petitioner has demonstrated in her case to the Appeals Court that FLRA has not rendered a General Counsel decision. The generic letter is not a decision, nor does it demonstrate proceedings per the statute were ever upheld by the General Counsel in the cases. But in the alternative, all letters from proceedings within FLRA are considered decisions. A Court has jurisdiction to review Authority decisions and orders. To this we add that pursuant to the Authority's own regulations at *2429.17* regarding "Reconsideration" employees who received the generic letters can motion for reconsideration after OGC declines to issue a ULP. The Authority' in its own regulations and practices have recognized that the non-issuance of a ULP is a final decision or order of the Authority upon which Reconsideration can be granted. Therefore, that the Authority recognizes that the non-issuance of a ULP is a decision and/or order of the Authority. Therefore, the Court has jurisdiction to review.

Due process, protection of due process and equal protection

under the law, for federal employees is an ultimate intent of Congress, the FLRA Statute and the U.S. Constitution. Jurisdiction is appropriate by the Court when there is a "strong and clear" demonstration that a clear and mandatory provision of the Act has been violated, *Mc Culloch.*

Ms. Nigro asserted and demonstrated gross violations of the statute by FLRA and constitutional claims and challenges which the Court did not address. 'Judicial involvement is open for constitutional dimensions or gross violations of the statute". *131 U.S. D.C. 55* and "Congress intends judicial protections when there are actions contrary to specific mandates" *Leedom.*

The FLRA did not meet its statutory obligation *(7101-7135 and reg at 2400)* of investigation and fair proceedings and it is pellucidly clear the errors of the FLRA are obstructing Ms. Nigro's due process and property interests. Ms. Nigro is harmed by absence of judicial review. A prosecutors discretion is "subject to constitutional constraints", *442 US 114.* We also add Ms. Nigro as co-FLRA complainants are also being harmed from no judicial review as they lost due process rights. Further, the NTEU is harmed by absence of judicial review as more members employees are gathering to sue them. "When a legal challenge focuses on an announcement of a substantive statutory interpretation, courts are emphatically qualified to decide whether an agency has acted outside in the course of a non-enforcement decision ".*251 U.S: APP.239* Ms. Nigro met the constitutional components of standing requiring that allege suffering of personal injury (see 4 petitions and exhibits for these cases), the injury is traceable to the defendant's challenged conduct (FLRA gross actions and errors at a minimum), and injury is likely to be redressed by the relief sought,

251 U.S. App. 239 (due process, etc., as outlined in the 4 petitions, exhibits and motions for these cases).

The Petitioner demonstrated her and others due process and equal protection has been obstructed, circumvented by FLRA, (i.e., gross acts/ errors which FLRA said are present, and Petitioner assert other ill factors by FLRA also). Since the Petitioner asserted and demonstrated the above challengeable acts in her petitions, it was found the following case cite shows that the this Court can get involved. "Non-enforcement decisions usually do not involve the exercise of coercive power over individuals, liberty or property rights, and thus do not infringe upon areas that the courts are called upon to correct. *251 U.S. App D.C. 239.* This case shows well that the claims are well within the jurisdiction of this honorable court because federal rights to due process, equal protection are being interfered with from the actions and errors of the FLRA, and in some cases like the Petitioner's, her liberty and property interests are being impacted. Therefore, the Court does have jurisdiction as they are called upon to correct such situations via the delegation of the Constitution Article III at a minimum.

Statutory interpretations involved in non-enforcement decisions are reviewable. They are reviewable when those interpretations will be used. Dunlop (Since NTEU has been using the FLRA's decisions in these ULP's to deny federal employees rights and arbitration they have become decisions and are reviewable by this honorable court).

Congress, however may make exceptions to the traditional practice of non-reviewability. Since judicial review of administrative action is a presumption, it can be overcome by

specific language, through legislative history, or any other reliable indication of congressional intent. However, if any substantial doubt about the congressional intent exists, the general presumption favoring judicial review of administrative action is controlling 735 supp 1069". The *Civil Service Reform Act, (CSRA) of 1978* states that it is Congress' intent that the Courts assert jurisdiction over these constitutional claims and challenges.

A court can assert jurisdiction and "can remand and challenge whether the statutory interpretations were arbitrary, capricious or otherwise contrary to law", in these non-reviewable decision, *251 U.S. App. D.C. 239, even further that Interpretations by the FLRA in non-enforcement decisions are reviewable 251 U.S. D.C. 239*

The Appeals Court had jurisdiction, As. Nigro has throughout her cases raised constitutional claims (due process, property and liberty interests, obstruction of due process, equal protection). "Jurisdiction is present when constitutional claims are made and when federal rights are being interfered with or denied". *Griffith, Baher, Chicago V. NLRB*

FURTHER SUPPORTING ARGUMENTS

The Supreme Court has recognized that the structure of the exclusive representations system can cause wrongful deprivation which gave them much concern, as early as Kalaharos. Also that the Courts are recognizing that the FLRA's decisions have been off base and unreasonable. Which supports Ms. Nigro's constitutional claim that the actions/ errors of FLRA are obstructing due process for federal employees and the Supreme Court should assert jurisdiction..

This Court has jurisdiction over petition in relation to Due Process and Equal Protection. Petitioner holds a property, liberty and life interest in the old Product Assurance job that was taken away from her without her being given due process and equal protection. Along these lines Petitioner is being denied by IRS, NTEU and FLRA information, hearings, investigation, witnesses, etc.. Further, the union would not assist in any way Ms. Nigro in getting due process and equal protection in the loss of that Product Assurance Computer Specialist job. Then the FLRA would not assist and did put up road blocks to the Petitioner getting due process and equal protection to regain the old Computer Specialist job. This included the FLRA and its stated matters about mere common errors of law are unimportant, but Petitioner demonstrates those gross actions and errors are important. All these issues are important to Federal Employees, particularly in adverse actions cases.

The Congress in *5 U.S.C..7123* ...did not preclude review of constitutional claims regarding the Authority. *Ralpho v Bell 186 U.S.APP). D.C. 368 569 F. 2d 607 (D.C. Cir 1977)*

The legislative history of the Civil Service Reform Act (CSRA) supports our conclusion in why this honorable Court can assert jurisdiction. Specifically, Congress in the House version of the bill provided for review in federal courts of appeal of virtually all FLRA decisions. *HR. 11, 280, 95th Cong. 2nd Session 701(1978), House version of* ss 7123 authorizing review at behest of "any person aggrieved by any final order of the Authority.

The Senate bill limited judicial review of the FLRA to unfair labor practice decisions, decisions involving constitutional issues, and decisions on exceptions to arbitrators' awards based on unfair labor practice complaints. *S. 2640, 95th Cong., 2d Sess. 5 701(1978)* (Senate's proposed s 7204 (making all decisions of the Authority "final and conclusive" and stripping courts of jurisdiction to review, but allowing for review of "questions arising under the Constitution"). In conference, the House conferees acceded to the Senate view.

The Senate Bill made reviewable in court decisions of the Authority concerning unfair labor practices, including awards of arbitrators relating to unfair labor practices. Otherwise, the Senate provides for review for questions arising under the Constitution.

Federal Civil Service employees do have property, liberty, and life interests which are protected by the U.S. Constitution's Amendments of Due Process and Equal Protection, in retaining their jobs. The Courts have jurisdiction. We raise such question and challenges of constitutional claim. The petitioners, petitions focus on the deliberate adverse actions towards her over the Product Assurance Computer Specialist position, throughout ULPs, and consistently demonstrated she has been denied due process and equal protection. This was especially problematic because of the property interest petitioner has in the position after holding it so long before such actions were taken against her with deliberate denial of due process.

Moreover, Congress did not intend to cut off Constitutional Review claims, so the Court can decide whether federal civil

service employees have a "property, liberty and life interest, of the sort protected by the U.S. Constitution's Amendments of Due Process and Equal Protection, especially in adverse action. Nor in matters where the FLRA makes deliberate gross errors in cases which then interfere with such necessary due process and equal protection for all Federal Employees. There is a constitutional defect in the FLRA's actions in these errors.

The Court has jurisdiction over Petitioner's petitions/ appeals by way of the gross actions/ errors of the FLRA. Petitioner correlated between those cases she put forward in these proceedings that a main question has been, but for, the gross actions errors of FLRA petitioner and those associated would have received due process and equal protection in arbitration cases, and NTEU would not currently be, being sued. We believe the Court must address and remedy for consistency of law the errors concerning duty of fair representation, as again but for those errors by FLRA due process would have been upheld and NTEU not sued. This is a global and constitutional challenge issue, which affects all prior, current and future federal employees.

The decision conflicts and is problematic particularly in that the Appeals Court's decision denies citizens of the United States (federal Employees) the right to challenge the laws, errors, statutes, and processes when they interfere and/or violate constitutionally protected rights, like the Due Process and Equal Protection Clause of the 14th Amendment of the Constitution. The Courts decision effectively overrides the U.S. Supreme Court and the Congress of the United States and it should not.

This Supreme Court has jurisdiction over Petitioner's petitions/ appeals by way of limiting harm to the parties. Via the constitutional challenges the attack holds the promise of relief from the burden/ obstruction deriving from the challenged actions and statues. The Petitioner having alleged and demonstrated such a personal stake for herself (past adverse actions issue) and those associated through the challenges. Concrete adverseness exists in this controversy, which sharpens the presentation of issues upon which courts so largely depend for illumination of difficult constitutional questions. *Baker.*

Change in law and Congressional Intent

The Court has jurisdiction over Petitioner's petitions appeals because of the ripeness for this decision and new law. The signing of the Homeland Security Bill H.R. 5005 on November 25, 2002, ushered in a new era for the way government operates. When these petitions were initially filed, the legislation for the Department of Homeland Security was not signed. It was in debate on the Senate floor. We talked of this in our prior filings in these proceedings to the 4th Circuit. We asserted the fact that the government and its administrative process are in desperate need of reform. Senate passed the Homeland Security legislation and the President signed it into law (11/25/02) ushering in a new era for the federal government, one which says the way government does business must change. The obstructive and non-functioning processes that do not work for the government, the federal employees and the taxpayers at large. It is not an unknown fact to this Supreme Court that many have challenged this non-reviewability clause over these many years asserting a change is very much in need. We believe our Petition makes the case for that needed change.

We believe this issue is ripe for judicial change as the time for government reform is now. It is Congress' intent and the President's intent that the government shall be reformed in its administrative process and procedures. This Supreme Court we ask to be involved in the cutting edge of that change.

CONCLUSION

The rights of citizens/ federal employees to challenge the constitutionality of that which affects their due process and equal protection is fundamental to being an American and living in a free society. This Supreme Court must rule it has jurisdiction and ability to give relief for federal employees, or to protect their federal rights before losses occur to them. Because of the serious nature of this removal of fundamental right, property, liberty and interests and that it overturns the decisions of the United States Supreme Court, other Courts (as mentioned above) and the Congress' intent, appellant requests certiorari be granted.

Petitioner respectfully prays that this Court issue its writ of certiorari and accept jurisdiction over this case.

Respectfully submitted,

Vera Nigro
c/o 43 Courage Lane
Stafford VA 22445
Msg/Svc and Fax (703) 221-0211

APPENDIX

NOTICE OF ISSUANCE OF MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

February 5, 2003 Mandate
TO: Clerk, District Court/Agency

FROM: Deborah S. Daniel Deputy Clerk

RE: 02-2003 Nigro V. FLRA 01-0035-WA-CO
02-2004 Nigro V. FLRA 01-0631-WA-CO
02-2005 Nigro V. FLRA 00652-WA-CA
02-2006 Nigro V. FLRA 00653-WA-CO

HEREWITH IS THE MANDATE OF THIS COURT, ISSUED THIS DAY, ON THE JUDGMENT ENTERED BY THE COURT ON 11/25/02.

[x] Order and Certified Copy of Judgment
Opinion and Certified Copy of Judgment
Order on Costs
Order dismissing appeal R42(b) or Local Rule 45
Other:
The record has been retained for use in case number

A copy of the judgment is enclosed to counsel/ pro se parties.
cc: Vera Nigro
David Michael Smith
William Reed Tobey
James Frederick Blandford
Sharon Quinn Harris

JUDGMENT FILED NOVEMBER 25, 2002
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 02-2003 01 - 0035-WA-CO

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

NO. 02-2004 01-0631-WA-CO
VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUThORITY
Respondent

NO. 02-2005 00652-WA-CA

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

NO. 02-2006 00653-WA-CO

VERA NIGRO

Petitioner

V

FEDERAL LABOR RELATIONS AUThORITY

Respondent

In accordance with the Court's order of today, the above appeals are dismissed.

/S/ Patricia S. Connor CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
FILED January 28, 2003

No. 02-2003 01-0035-WA-CO

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

No. 02-2004 01-0631-WA-CO

VERA NIGRO, Petitioner
V.
FEDERAL LABOR RELATIONS AUTHORITY
Respondent

No. 02-2005 00652-WA-CA

VERA NIGRO
Petitioner
V
FEDERAL LABOR RELATIONS AUTHORITY
Respondent

No. 02-2006, 00653-WA-CO

VERA NIGRO
Petitioner

V.

FEDERAL LABOR RELATIONS AUThORITY
Respondent

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is 0ú the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court.

/s/ Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR.
UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517

PATRICIA S. CONNOR
CLERK
www.ca4.uscourts.gov

TELEPHONE
(804)916-2700

January 28, 2003

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Sharon Quinn Harris, Esq.
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
901 East Street, N.W.
Washington, DC 20530

Re: 02-2003 Nigro v. FLRA.....01-0035-WA-CO
02-2004 Nigro v. FLRA.....01-0631-WA-CO
02-2005 Nigro v. FLRA.....00652-WA-CA
02-2006 Nigro V. FLRA.....00653-WA-CO

Dear Counsel:

Enclosed is a copy of an order filed today in this case.

Yours truly,

PATRICIA S. CONNOR
Clerk
By:
/s/ Deborah S. Daniel
Enclosure(s)

Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 25, 2002

No. 02-2003 01 - 0035-WA-CO

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

No. 02-2004...01-0631-WA-CO

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

No 02-2005...00652-WA-CA

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

petition for rehearing is timely filed, the time runs from the denial of that petition. Content, fees, and number of copies of a petition for writ of certiorari are governed by the Rules of the United States Supreme Court.

PATRICIA S. CONNOR
CLERK

No. 02-2006 00653-WA-CO

VERA NIGRO
Petitioner

V

FEDERAL LABOR RELATIONS AUTHORITY
Respondent

ORDER

Respondent has filed a motion to dismiss and Petitioner has filed a response and replies were filed by both parties.

The Court grants the motion.

Entered at the direction of Judge Motz with the concurrence of Judge Williams and Judge Traxler.

For the Court,
/S/ Patricia S. Connor CLERK

Crisco 07/10/2000

FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

Item 6: Tell exactly WHAT the labor organization did. Start with the DATE and LOCATION, state WHO was involved, including titles.

The National Treasury Employees Union (NTEU), National Office (National) in Washington DC, by its agents and representatives, have committed an unfair labor practice as they have wrongfully influenced the agency (IRS) against me, derailed settlement negotiations, and acted arbitrarily and in bad faith. NTEU National has violated 5 U.S.C. °71 16(b)(1), (2), (5) and (8). I believe that NTEU National has influenced the agency (IRS) against me and interfered with settlement negotiations being conducted by NTEU Chapter 65. I believe that NTEU National's actions were motivated, at least in part, by its political disputes with NTEU Chapter 65 and its officers. NTEU National has treated me (and other NTEU Chapter 65 members) differently than other bargaining unit employees that NTEU National represents. Furthermore, I contend that NTEU National's actions, with respect to my grievance (and others), were motivated by retaliation against NTEU Chapter 65, were intentional and unjustifiable.

Mr. John McEleney, Director, Field Operations and Organizing, NTEU National and Ms. Kimberly Moseley, Field Representative, NTEU National have interfered with the grievance negotiations being conducted by Ms. Vera Nigro, President, NTEU Chapter 65 with IRS Labor Relations. On April 26, 2000, Ms. Nigro informed me that Ms. Moseley stated to her that my attorney was robbing me, that she was going to put a stop to the settlement, and then drop my case in arbitration.

On May 23,2000, Mr. McEleney, sent a letter to my attorney, Ms. Terese Connerton, Attorney, Connerton & Ray, as well as to Mr. Neil Worden, Chief, General Legal Services; Mr. Barry Pelner, Acting Chief, Headquarters Operations; Ms. Joan McGuiver, Acting Chief, Headquarters Labor Relations, and Ms. Vera Nigro, Chapter President, NTEU Chapter 65. See Exhibit 1: Letter to Terese Connerton from John McEleney, dated May 23,2000. In this letter, Mr. McEleney accuses the agency (IRS) of illegally dealing with my attorney, Ms. Connerton. Mr. McEleney sent this letter without discussing the issues with Ms. Connerton, Ms. Nigro or me before its issuance. The letter was timed to ensure that the agency (IRS) would not pay me damages in the amount of my attorneys fees. On May 25, 2000, Ms. Vera Nigro received a Third-Step Response from Mr. Len Baptiste, Director, Office of Security and Privacy Oversight. See Exhibit 2: Memorandum for Vera Nigro from Len Baptiste, dated May 25, 2000. This came as quite a surprise as this was different than how negotiations were progressing and also did not include the last offer from Ms. Pamela Vinson, Representative, Labor Relations. On May 30, 2000, my attorney, Ms. Connerton, responded to Mr. McEleney's May 23,2000 letter. See Exhibit 3: Letter to John McEleney from Terese M. Connerton, dated May 30, 2000. On June 9, 2000, I spoke with Mr. McEleney and I inquired as to what he would be doing now that his May 23, 2000 letter derailed my settlement. Mr. McEleney advised me that he would do "nothing" and that he "didn't know anything about my case." Then later that day, Mr. McEleney informed me that he would be contacting Mr. Baptiste to encourage him to sign off on the May 25,2000 letter, and also relieve him of any concern to the exposure of an outside attorney. I don't know whether Mr. McEleney contacted Mr. Baptiste, but I did receive another third step response from Mr. Baptiste that he was withdrawing his offer to pay me damages.

Refer to Exhibit 5: Memorandum for Vera Nigro from Len Baptiste, dated June 6, 2000.

Background:

On or about March 12, 1999,1 received a Notice of Proposed Disciplinary Suspension from Ms. Donna Laiti, Section Chief, Certification Program Office. On March 25, 1999, NTEU Chapter 65 filed a grievance on my behalf, and thereafter requested that I be allowed an oral reply. A mutually convenient date could not be scheduled, so I filed a Response and Rebuttal to the Notice on or about October 26,1999.

On November 30, 1999, I received a Letter of Admonishment from Mr. William Hadesty, Director, Security and Privacy Oversight IS: SPO: S. On December 16, 1999, NTEU Chapter 65 filed a grievance at the Second Step. On February 1, 2000, a Step 2 Grievance Meeting was held with Mr. William Hadesty, Director Security, Standards and Evaluations; Mr. Brian Worthen, Staff Assistant to the Director of Security Evaluation and Oversight; Ms. Pamela Vinson, Representative, Labor Relations; Ms. Terese Connerton, Attorney,. Connerton & Ray; Mr. Jerry Feith, President, NTEU Chapter 65; Ms. Vera Nigro, Vice President, NTEU Chapter' 65 and myself. On February 11, 2000, Mr. Hadesty issued a response upholding his determination of the issuance of a Letter of Admonishment. On March 23,2000, A Step 3 grievance meeting was held with Mr. Len Baptiste, Director, Office of Security and Privacy Oversight IS:SPO, Mr. Worthen, Ms. Vinson, Ms. Connerton, Ms. Nigro, and myself.

On or about December, 1999, I was advised by my attorney, Ms. Terese Connerton, that Ms. Kimberly Moseley made several disparaging remarks about my case. At that time, my attorney informed Ms. Moseley that she was assisting NTEU Chapter 65 in developing a response to the Letter of Admonishment.

On or about April 14, 2000, Ms. Vera Nigro received a settlement offer from Ms. Pamela Vinson which included the rescinding of the Letter of Admonishment and the payment of my attorneys' fees. On or about April 24, 2000, Ms. Nigro sent a response indicating that I would settle for the rescinding of the Letter of Admonishment, issuance of a closed without action letter, full payment of attorneys' fees, and promotion to a GS 13 position. On or about April 26, 2000, Ms. Nigro informed me that Ms. Kimberly Moseley stated to her that my attorney was robbing me, that she would put a stop to the settlement, and then drop my case in arbitration. On or about April 27, 2000, Ms. Nigro was contacted by Ms. Pamela Vinson; negotiations were preceding positively. At that time, Ms. Nigro informed me that Ms. Vinson asked to contact my attorney, Ms. Terese Connerton, directly because they needed an itemized statement of my attorneys fees and expenses. As requested, on April 28,2000 an itemized statement was sent to Ms. Pamela Vinson. See Exhibit 4: Memorandum to Pamela Vinson from Terese Connerton, dated April 28,2000. Also, during this time frame, Ms. Vinson also wanted to discuss the details of my promotion to a GS-13 position because that would be looked at, indicating that there wasn't a problem. However, this discussion never took place.

On May 23, 2000, Mr. John McEleney, Director, Field Operations and Organizing, NTEU sent a letter to my attorney, Ms. Terese Connerton, and the agency (IRS) indicating that her involvement was inappropriate and that she had no authority in the IRS/NTEU negotiated grievance procedure. This is not an accurate depiction of my attorney's involvement. I requested from NTEU Chapter 65 that my attorney, Ms. Connerton, be present at the grievance meetings. NTEU Chapter 65 (Mr. Jerry Feith and Ms. Vera Nigro) indicated that they agreed that my attorney, Ms. Connerton, be present at the grievance meetings to assist them in arguing the case.

NTEU Chapter 65 was present at both Step 2 and Step 3 grievance meetings, was at all times in charge of negotiations, and at no time did the agency indicate that Ms. Connerton's presence was a problem. On May 25,2000, Ms. Vera Nigro received a Third-Step Response from Mr. Len Baptiste, Director, Office of Security and Privacy Oversight. Refer to Exhibit 2: Memorandum for Vera Nigro from Len Baptiste, dated May 25, 2000. This came as quite a surprise as this was different than how negotiations were progressing and also did not include the last offer from Ms. Pamela Vinson, Representative, Labor Relations. On June 6, 2000, I received a memorandum from Mr. Baptiste informing me that he is withdrawing the portions of the third step response and settlement offer which expresses a willingness to pay my attorney's fees, due to concerns raised in Mr. McEleney's letter. See Exhibit 5: Memorandum for Vera Nigro from Len Baptiste, dated June 6, 2000. On June 7, 2000, Ms. Nigro responded to the agency's June 6, 2000 memorandum. See Exhibit 6: Memorandum to Len Baptiste from Vera Nigro, dated June 7, 2000.

On June 9, 2000, I briefly spoke with Mr. John McEleney. I inquired as to what he would be doing now that his May 23, 2000 letter derailed my settlement. Mr. McEleney advised me that he would do "nothing" and that he "didn't know anything about my case." Then later that day, Mr. McEleney informed me that he would be contacting Mr. Len Baptiste to encourage him to sign off on the May 25, 2000 letter, and also relieve him of any concern to the exposure of an outside attorney. I don't know if Mr. McEleney ever did this.

On June 14, 2000, Ms. Vera Nigro, received a memorandum from Mr. Stuart Fields, Acting Chief, Labor Relations Section, A:HQ:HR:MP:L stating that Mr. Baptiste's decision in the June 6, 2000 memorandum will not change, no further relief would be granted, and the processing of my grievance had been completed.

See Exhibit 7: Memorandum to Vera Nigro from Stuart H. Fields, dated June 12, 2000. On June 15, 2000, Ms. Colleen Kelley, National President, NTEU invoked arbitration on my case and assigned it to Ms. Kimberly Moseley. See Exhibit 8 Memorandum to Barry Pelner from Colleen M. Kelley, dated June 15, 2000. Ms. Moseley has made hostile statements against me to my attorney, Ms. Terese Connerton, and Ms. Vera Nigro, and stated that she was going to drop my case in arbitration. Ms. Moseley is not the current field representative assigned to NTEU Chapter 65 arbitrations, and I believe that NTEU National assigned Ms. Moseley my case in retaliation for my complaining to Mr. John McEleney concerning his actions.

From June 15, 2000 to date, I have been attempting to schedule a meeting with Mr. John McEleney to discuss his May 23, 2000 letter and what his plan of action was going to be to settle my case. Mr. McEleney has been reluctant to meet with me. See Exhibit 9: Letter to John McEleney from Denise Crisco, dated July 6, 2000.

I believe that NTEU National and the agency (IRS) are working to drop my case from arbitration because the Letter of Admonishment was rescinded. See Exhibit 10: Letter to Denise Crisco from Len Baptiste, dated June 30, 2000.

LAW OFFICES
CONNERTON & RAY
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WASHINGTON. DC 20005-2102
(202) 737-1900
FAX: (202) 659-3458

May 30,2000

VIA FACSIMILE (202) 783-4085

John McEleney
Director, Field Operations and Organizing
The National Treasury Employees Union
901 B Street, N.W., Suite 600
Washington, DC 20004

Re: Involvement of Private Counsel In IRS/NTEU Negotiated Grievance and Negotiated Arbitration Procedures

Dear Mr. McEleney:

I am well aware of NTEU's exclusive representation rights with respect to IRS employees. I, in no way, interfered with those rights and never intended to have NTEU waive its rights under °7114. As soon as Ms. Kimberly Mosely informed me of the exclusive representation provisions of the NORD, I assured her and Ms. Vera Nigro that I would work with and attempt to assist them.

The NORD does not preclude my participation in grievance meetings. As I read it, Chapter 65 has the right to select a representative other than the Chief Steward or the Chapter President to assist in presenting a member's grievance.

Ms. Vera Nigro, then Chapter's 65 Chief Steward, brought Ms. Denise Crisco, Ms. Ada Hatch and Ms. Leslie White to my office. I was asked to assist them in the development of their cases so that they could be presented either to the management officials through the negotiated grievance procedure or to Ms. Mosely for purposes of arbitration. And this is all I did. Ms. Nigro was intimately involved in numerous strategy and fact discussions regarding grievances that had been filed by the Chapter on behalf of each member. I did not go to any grievance proceeding without Mr. Gerry Feith, Chapter 65's President, and/or Ms. Vera Nigro. Chapter 65 presented the grievance to management and I provided additional comments as I thought appropriate. I gave each and every submission to Ms. Vera Nigro and Mr. Gerry Feith prior to it being submitted to management. Indeed, changes and additions to the written submissions were made at their request. When the settlement was presented, it was sent to Ms. Vera Nigro, not me. I was only asked to send over documentation supporting the members' request for attorneys' fees. So at no time was Chapter 65 not part and parcel of the proposed settlement of Ms. Crisco's and Ms. Hatch's grievances.

Moreover, when I met with Ms. Mosely, I simply provided her with source documents to he used in arbitration and my client and I developed records relating damages. At no time did I tell Ms. Mosely that I wanted to arbitrate Ms. White's case.

Your letter to me was sent to Labor Relations. This could not have come at a worst time. Once again, NTEU has not been protective of the members' interests. You could have called me, or had a meeting with me, Chapter 65 and the members. Your "institutional" interests could have been protected through discussions with me. You did not need to publish our disagreement throughout the agency. We now look like "laughing stocks", all to the members' detriment

Circulating the letter has seriously impeded the settlement of Ms. Crisco's and Ms. Hatch's grievances. Management now knows that there is a serious rift between the Chapter 65 and National regarding my presence. The agency's Third Step Response to the Grievances issued May 25,2000 clearly indicates that they will not give anything more than what they have already committed in writing. And the agency believes that NTEU will not pursue these grievances to arbitration. So the members" counter Proposal is dead in the water. Significant damage has been done to the members.

With respect to Leslie White, essentially Ms. White was told by Ms. Mosely that she was lucky not to get fired. She is very upset by Ms. Mosely's comments to her at their first meeting. She has requested another representative.

I have worked representing unions and union members all of my life. I never once criticized NTEU or any other union to my clients and when these members were upset with NTEU's handling of their cases or the rude and insensitive comments of Ms. Mosely, I assured them that the union would work in their best interests. However, my assurances now ring hollow.

I am very concerned that our differences have jeopardized the members' cases. It serves nobody's interests to fight amongst ourselves. A victory for them is a victory for NTEU. So where do we go from here? I would hope that National NTEU will not further impede Ms. Nigro's negotiations to try to settle this matter and would actually push for the settlement that the members have requested. And I would hope that Ms. White gets assigned another representative to whom I can give records relating to her damages.

Please give me a call to discuss this matter at your earliest convenience.

Very truly yours,

Terese M Connerton

cc: Denise Crisco
Ada Hatch
Leslie White
Vera Nigro, President Chapter 65

NTEU
IRS NATIONAL OFFICE CHAPTER 65
SERVING NATIONAL OFFICE SINCE 1952

Date: June 7, 2000

To: Len Baptiste
Director, Office of security and Privacy Oversight

From: Vera Nigro
President, NTEU Chapter 65

Subject: Response to your June 6, 2000 memorandum Crisco and Hatch grievances

This memorandum is in response to your memorandum dated June 6, 2000. First and foremost, as far as the settlement proposal, you can not revoke it. You made an offer and in speaking with both Ms. Hatch and Ms. Crisco this morning, they have agreed to accept the settlement as proposed in your May 25, 2000 letter, with a no action letter from you. My clients, I'm sure will be going after National NTEU for the rest.

Concerning the other issues you raised which caused your "about face" on the original agreement. I have received a copy of Mr. Mc Eleney's letter which caused these negative circumstances for my members. His letter is very incorrect, as the NORD V does not and would not preclude Ms. Connerton's participation in the grievance meetings. Ms. Connerton assisted our members in an outstanding fashion, at no cost to the chapter.

Jerry Feith and/or I were involved in the development of the grievances and kept Ms. Connerton in contact with Ms. Moseley, who was our Field Representative, and I and/or Jerry were in every meeting with management. Ms. Connerton was NOT acting independently. NTEU's exclusive representation rights were NOT violated.

Unfortunately, Ms. Crisco's and Ms. Hatch's grievances are caught in the middle of a dispute, and consequently **by law the National NTEU should not be influencing the Agency in grievance procedure outcomes against out members.**

Again, payment of the money to Ms. Hatch and Ms. Crisco will not violate the agency's obligation to NTEU. The agency and you have committed in writing to pay money to the grievant's and they have now accepted. I urge you to reconsider your withdrawal of your settlement offer and right the wrongs that have been done in this case to the members.

cc: Colleen Kelley
John Mc Eleney
Terry Connerton
Ada Hatch
Denise Crisco

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 12 2000

MEMORANDUM TO VERA NIGRO, PRESIDENT
NTEU CHAPTER 65

FROM: Stuart H Fields
Acting Chief, Labor Relations Section A:HQ:HR:MP:L

SUBJECT: Third Step Response to Grievance Filed on Behalf of Denise Crisco and NTEU Chapter 65

This is in response to your June 7,2000 memorandum to Mr. Len Baptiste, Director Office of Security and Privacy Oversight regarding the above captioned matter. Mr. Baptiste's decision in his June 6,2000 memorandum will not change and no further relief will be granted regarding this issue. As a result, the processing of Denise Crisco's grievance as outlined in NORD V, Article 41, ° 6, has been completed. In reference to Ada Hatch's grievance, NTEU Chapter 65 invoked arbitration on September 29,1999.

If you have any questions concerning this matter, or would like to discuss it further, please call Pamela Vinson, Labor Relations Specialist, on (202) 622-6452.

June 15, 2000

Barry Pelner
Acting Chief, Headquarters Operations
Internal Revenue Service
M:IIQ Room 1131
111 Constitution Ave., N.W.
Washington, DC 2O224

Re: Arbitration Invocation Chapter 65, Denise Crisco
(Letter of Admonishment - Final Decision May 25, 2000)

Dear Mr. Pelner:

Pursuant to Article 41 and 43 of the NORD V, the National Agreement between the Internal Revenue Service and the National Treasury Employees Union (NTEU), NTEU hereby invokes arbitration over the referenced grievant. Please be advised that NTEU considers interviews of bargaining unit employees in preparation for arbitration hearings to be formal discussions under the Federal Service-Labor Management Relations Statute Accordingly, it is your Agency's obligation to provide NTEU advance notice and opportunity to attend such interviews.

Any further communication regarding this matter should be directed to Ms :Kimberly Mose1ey, National Field Representative in the NTEU D.C. Field Office. Ms Moseley can be contacted at. 901 E Street, N.W., Washington, D.C. 20004 or by telephone at (202)638-7760.

Sincerely,
Colleen M. Kelley,National President

cc: Vera Nigro, NTEU Chapter 65 President

July 6, 2000

VIA FACSIMILE (202) 508-3778

Mr. John McEleney
Director, Field Operations and Organizing
The National Treasury Employees Union
901 E Street, N.W., Suite 600
Washington, DC 20004-2037

Dear Mr. McEleney,

This letter is a follow-up to the conversation we had on Thursday, June 29, 2000 regarding the scheduling of a meeting to discuss your May 23, 2000 letter. You informed me that your calendar was booked, that you would be taking some leave the week of July 3, 2000, and that you would back to me once you checked both your and Ms. Kimberley Moseley's calendar.

You also inquired about my statements to you regarding the clearing of my name as you didn't understand. As I have stated to you on several occasions, the agency's third-step response of May 25,2000 does not clear my name, and has found that the letter of admonishment was justified. The third-step response is an insult to my integrity and upholds managements conduct. I believe that the evidence I submitted clearly demonstrates that the reasons and specifications were not supported by substantial evidence as required by IRM 0752.43(12)(4). In the amended grievance and in my written response to the letter of admonishment to Mr. William Hadesty for the second-step grievance meeting held on February 1, 2000, I have requested that the letter of admonishment be rescinded and a closed without action letter be issued. This combined action, I believe, appropriately clears my name as it addresses the evidence relied upon.

To assist you in this matter, I have asked Ms. Vera Nigro, President NTEU Chapter 65 to provide you with a copy of my case file for your review.

On June 9, 2000, when I first spoke to you, I asked you what you would be doing now that your May 23, 2000 letter has derailed my settlement. You advised me that you would do "nothing" and that you "didn't know anything about my case." Then later that day, you informed me that you would be contacting Mr. Len Baptiste to encourage him to sign off on the May 25, 2000 letter, and you would also relieve him of any concern to the exposure of an outside attorney. In a June 6, 2000 letter, the agency withdraws the May 25, 2000 offer based upon your May 23, 2000 letter; and in a June 12, 2000 letter, the agency considered the processing of my grievance completed.

Since your May 23, 2000 letter has derailed the settlement of my case, and as I have expressed to you already, I would like to know what your plan of action is to rectify this situation. I want to obtain a favorable settlement that must include the letter of admonishment be rescinded, the issuance of a closed without action letter, full payment of my attorneys' fees, and placement into a GS 334-13 Computer Specialist position. During negotiations, it was made clear to me that full payment of attorneys' fees and my placement into a GS 334-13 position was not a problem.

Since you have been reluctant to meet with me to discuss this situation, please let me know your plan of action to settle my case by Tuesday, July 18, 2000.

If you have any questions, please feel free to contact me at work on (202) 283-6611 or at home on (703)799-0058.

Sincerely,

Denise M. Crisco

cc: Vera Nigro, President, NTEU Chapter 65
Terry Connerton, Attorney, Connerton & Ray

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Jun 30 2000

Ms. Denise Crisco
Internal Revenue Service
5OOO Ellin Road
Lanham, Maryland 20705

Dear Ms. Crisco:

In my third step response dated May 25, 2O00, I informed Vera Nigro, President NTEU Chapter 65 that I would rescind the admonishment letter that was issued to you on November 30, 1999. This is to inform you that as of June 26, 2OO0, the letter has been removed from your Drop File.

If you have any questions, please contact Pamela Vinson, Labor Relations specialist on 202-622-6452.

Sincerely,

Len Baptiste Director,
Office of Security and Privacy Oversight

cc: Vera Nigro, President, NTEU Chapter 65

07/24/2000
Denise Crisco
1ST Amend Charge

FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

Item 6: Tell exactly WHAT the labor organization did. Start with the DATE and LOCATION, state WHO was involved, including titles.

The National Treasury Employees Union (NTEU), National Office (National) in Washington DC, by its agents and representatives have committed an unfair labor practice as they have wrongfully influenced the agency (IRS) against me, derailed settlement negotiations, acted arbitrarily and in bad faith. NTEU National has violated Section 711 6(b)(1), (2), (5) and (8). NTEU National has influenced the agency (IRS) against me and interfered with settlement negotiations being conducted by NTEU Chapter 65. NTEU National's actions were motivated, at least in part, by its political disputes with NTEU Chapter 65 and its officers. NTEU National has treated me (and other NTEU Chapter 65 members) differently than other bargaining unit employees that NTEU National represents. Furthermore, I contend that NTEU National's actions, with respect to my grievance (and others), were motivated by retaliation against NTEU Chapter 65, were intentional and unjustifiable.

Beginning on or about April 26, 2000, Mr. John McEleney, Director, Field Operations and Organizing, NTEU National and Ms. Kimberly Moseley, Field Representative, NTEU National interfered with the grievance negotiations being conducted by

BEST AVAILABLE COPY

Ms. Vera Nigro, President, NTEU Chapter 65 with IRS Labor Relations, influenced the agency against me and have derailed the settlement of my case.

Listed below is the chronological history of what NTEU National did.

On or about December, 1999, was advised by my attorney, Ms. Terese Connerton, Connerton & Ray, that Ms. Kimberly Moseley, made several disparaging remarks about my case. At that time, my attorney informed Ms. Moseley that she was assisting NTEU Chapter 65 in developing a response to the Letter of Admonishment.

On or about April 14, 2000, Ms. Vera Nigro, President, NTEU Chapter 65, received a settlement offer from Ms. Pamela Vinson, Representative, Labor Relations which included the rescinding of the Letter of Admonishment and the payment of my attorneys' fees. On or about April 18, 2000, Ms. Nigro informed me that my case was discussed with Ms. Colleen Kelley, President, NTEU National. On or about April 24, 2000, Ms. Nigro sent a response indicating that 1 would settle for the rescinding of the Letter of Admonishment, issuance of a closed without action letter, full payment of attorneys' fees, and promotion to a GS 13 position. On or about April 26,2000, Ms. Nigro informed me that Ms. Kimberly Moseley stated to her that my attorney was robbing me, that she would put a stop to the settlement, and then drop my case in arbitration. On or about April 27, 2000, Ms. Nigro was contacted by Ms. Pamela Vinson, and negotiations were proceeding positively.

At that time, Ms. Nigro informed me that Ms. Vinson asked to contact my attorney, Ms. Terese Connerton, directly because they needed an itemized statement of my attorneys fees and expenses. As requested, on April 28,2000 an itemized statement was sent to Ms. Pamela Vinson. Also, during this time frame, Ms. Vinson also wanted to discuss the details of my promotion to a 05-13 position because that would be looked at, indicating that there wasn't a problem. However, this discussion never took place.

On May 23, 2000, Mr. John McEleney, sent a letter to my attorney, Ms. Terese Connerton, and the agency (IRS) indicating that her involvement was inappropriate and that she had no authority in the IRS/NTEU negotiated grievance procedure. Prior to the grievance meetings, I requested from NTEU Chapter 65 that my attorney, Ms. Connerton, be present at the grievance meetings. NTEU Chapter 65 (Mr. Jerry Feith and Ms. Vera Nigro) indicated that it was permissible to them that my attorney, Ms. Connerton, be present at the grievance meetings. NTEU Chapter 65 was present at both Step 2 and Step 3 grievance meetings and at no time did the agency indicate that Ms. Connerton's presence was a problem. On May 25,2000, Ms. Vera Nigro received a Third-Step Response from Mr. Len Baptiste, Director, Office of Security and Privacy Oversight. On June 6, 2000,1 received a memorandum from Mr. Baptiste informing me that he is withdrawing the portions of the third step response and settlement offer which expresses a willingness to pay my attorney's fees, due to concerns raised in Mr. McEleney's letter. On June 7,2000, Ms. Nigro responded to the agency's June 6, 2000 memorandum, urging the agency to reconsider the withdrawal of the settlement offer, Mr. McEleney letter of May 23, 2000 was incorrect as the NORD V does not preclude Ms. Connerton participation, and NTEU's exclusive representation rights were not violated.

On June 9, 2000, I briefly spoke with Mr. John McEleney. I inquired as to what he would be doing now that his May 23, 2000 letter derailed my settlement. Mr. McEleney advised me that he would do "nothing" and that he "didn't know anything about my case." Then later that day, Mr. McEleney informed me that he would he contacting Mr. Len Baptiste to encourage him to sign off on the May 25, 2000 letter, and also relieve him of any concern to the exposure of an outside attorney. I don't know if Mr. McEleney ever did this.

On June 14,2000, Ms. Vera Nigro, received a memorandum from Mr. Stuart Fields, Acting Chief, Labor Relations Section, A:LIQ:HR:MP:L stating that Mr. Baptiste's decision in the June 6, 2000 memorandum will not change, no further relief would be granted, and the processing of my grievance had been completed. On June 15, 2000, Ms. Colleen Kelley, invoked arbitration on my case and assigned it to Ms. Kimberly Moseley. Ms. Moseley is not the current field representative assigned to NTEU Chapter 65 arbitrations. NTEU National assigned Ms. Moseley to my case in retaliation for my complaining to Mr. John McEleney concerning his actions.

From June 15, 2000 to date, I have been attempting to schedule a meeting with Mr. John McEleney to discuss his May 23, 2000 letter and what his plan of action was going to be to settle my case. ML McEleney has been unwilling to meet with me. NTEU National and the agency (IRS) are working to drop my case from arbitration because the Letter of Admonishment was rescinded by Mr. Baptiste in a letter dated June 30, 2000. NTEU National and the agency (IR S) are aware that I want damages in the amount of my attorneys fees, closed without action letter, and promotion to G513.

June 15, 2001
VIA OVERNIGHT DELIVERY

Federal Labor Relations Authority
Office of the General Counsel
607 14th Street, N.W. Suite 210
Washington, DC 20424-0001

Re: National Treasury Employees Union and Denise Crisco (Individual). Case No. WA-CO-00593

Dear General Counsel,

This letter is a request for reconsideration of the General Counsel's decision of June 5,2001 which denied my appeal of the Washington Regional Director's dismissal of the unfair labor practice charge that I filed against the National Treasury Employees Union in the above referenced case.

I believe extraordinary circumstances do exist because the General Counsel's decision to deny my appeal abdicates their statutory responsibility by upholding a decision which 'trampled" my rights. The findings which demonstrate the General Counsel's error and abdication are as follows.

(1) The General Counsel's ruling goes against and is inconsistent with Authority precedent. In cases, 10 FLRA No.91, National Treasury Employees Union and U.S. Customs Service Nuclear Regulatory Commission 10:519(91)CO; 15 FLRA No.105, Overseas Education Association and Joseph Cardone. 15:488(105)CO;

23 FLRA 686,691, National Federation of Federal Employees. Local 1453 and Kenneth A. Crawford (Individual). 23:686(92)CO; 14 FLRA No.85, American Federation of Government Employees Local 2000 AFL-CIO and William R. Massengale. 14:617(85)CA; and NLRB Case No. 15-CB-4361, Communication Workers of America Local Union No.3410 (Bell South Telecommunications. Inc) and Kellena L. Steverson. 328 NLRB No.135 , the Authority set specific standards mirroring NLRB which set the standards for the issuance of ULPs. I assert that the circumstances in my case far exceeds the normal threshold requirements for the issuance of an unfair labor practice. Here, NTEU interfered with the normal local chapter processes and deliberately took action against me under pretextual reasons. Despite the overwhelming evidence in my case which demonstrated that an unfair labor practice did occur, the Regional Director failed to issue a compliant which is inconsistent with Authority precedent. It also goes against public interest and what congress intended in 5 U.S.C. 71.

(2) The General Counsel's decisions fails to uphold their own regulations to give me appropriate due process under the law (equal protection) by neglecting to give me a full, fair and impartial investigation, to collect the best evidence possible, and consider all the evidence and circumstances relevant to my case. The General Counsel failed to adhere to its own policies by not fully considering the scope of the circumstances in my case. The Regional Director did not consider the relationship and past history of NTEU and Chapter 65. See General Counsel Chapter 3, Scope of the Investigation.

(3) The General Counsel further abdicated their statutory responsibility by ignoring my rights as a union member.

The General Counsel is taking the position that the rights of the NTEU's as the exclusive representation is more important than my rights as a member. The decision to pay attorney's fees in my case in no way adversely affected NTEU's interests nor did it interfere with the rights of all NTEU members.

(4) Finally, the Regional Director's and the General Counsel's decisions abandons all union members who want to represent themselves in grievances or when local chapters seek co-counsel in complicated cases. It fosters a hostile work environment by creating the image that when inept union representation occurs, union members find that they have no redress within the system.

In conclusion, based on the reasons herein and all facts conveyed in my appeal which I reiterate for your consideration, I request that the General Counsel reconsider my case. I request that the General Counsel reverse the Regional Director's dismissal of my charge and the case be assigned to another Field Attorney who would conduct a thorough and impartial investigation into my charges.

Very truly yours,

Denise M. Crisco

VIA OVERNIGHT DELIVERY April 25, 2001

Federal Labor Relations Authority
Office of the General Counsel
607 14th Street, N.W.
Suite 210, Attention: Appeals
Washington, DC 20424-0001

Re: National Treasury Employees Union and Denise Crisco (Individual)
Case No. WA-CO-00593

Dear General Counsel:

This letter is an appeal of the Regional Director's dismissal of a charge that I filed against the National Treasury Employees Union in the above referenced case. First and foremost, I do not believe that there was a full and impartial investigation of the facts in my complaint. I also believe that the written statement of the reasons for not issuing a complaint is based on erroneous findings of material facts and other material facts were ignored. See 5 C.F.R. °2423.11(e)(1),(2) and (5).

FACTUAL BACKGROUND

1. I have been an employee of the IRS since July 1987. Currently, I am Computer Specialist with the IRS and work in the Office of Cyber Security.

2. National Treasury Employees Union ("NTEU") is the exclusive representative of all bargaining unit employees at the IRS National Office. NTEU Chapter 65 was NTEU's duly authorized agent to represent employees at the IRS National Office.

3. On July 10, 2000, I filed an unfair labor practice charge against NTEU, charging a breach of its duty to fairly represent me under 5 U.S.C. °71 14(a)(1). After filing this charge, I received a phone call from Ms. Beth Landes, the Field Attorney assigned to my case, who told me in a derogatory and denigrating manner, that "the charge as is, is just not acceptable." When I asked in what way the charge was defective, I was directed to look at the instructions and to amend the charges in conformance thereto. See Crisco Affidavit #2 (attached hereto), ¦1.

4. I reread the instructions and believed that my first charge conformed to them. Nevertheless, in an effort to fully cooperate, I drafted my first amended charge, which was filed July 24, 2000. This amended charge too was deemed unacceptable by Ms. Landes. On August 1, 2000, Ms. Landes called and left me a voice mail message. She very angrily said, "as we spoke the first time, Ms. Crisco, in order to amend the charge properly, you need to have a clear and concise statement of exactly what it is that you are alleging. Again, what you have submitted is a 2-page, not clear or concise statement." Ms. Landes indicated that she needed a quick explanation of exactly what I was alleging as soon as possible. See Crisco Affidavit #2, ¦2 and 3.

5. I was very upset because I had followed the instructions and did not understand why Ms. Landes could not glean from my initial and first amended charges what it was that I was alleging. I asked Ms. Landes to provide me with an example of what she considered a proper format for the charge. However, she refused to do so. In total frustration, I retained Michael Barrett, Esq., a labor attorney, to assist me in getting my charge investigated by the FLRA. See Crisco Affidavit #2, ¦¦4, 5 and 6.

6. On August 22, 2000, Michael Barrett, Esq. and I met with Ms. Landes. For the first part of the meeting, Ms. Landes disparaged my charge and tried to convince me not to pursue it. I provided Ms. Landis with my affidavit and also a list of potential witnesses. I asked that she speak to Mr. Len Baptiste and Ms. Pamela Vinson, IRS Labor Relations Representative, but Ms. Landes said that she would let me know if that was necessary. Additionally, I asked her to speak with Terese M. Connerton and it was clear in her reactions to my bringing this matter up several times that she was not interested in speaking with Ms. Connerton. After Mr. Barrett and I left the meeting, we both firmly believed that Ms. Landes had no real intention of conducting a fair investigation into the charges. See Crisco Affidavit #2, ¦7; Barrett Affidavit (attached hereto, ¦5.

7. I do not know if Ms. Landes obtained a statement from Ms. Vera Nigro, NTEU Chapter 65 President. Ms. Nigro did provide an affidavit to Tracy Levine, Field Attorney, assigned to another case and Ms. Levine had represented that she would share the affidavit with Ms. Landes. See Nigro Affidavit (attached hereto). Further, I believe that Ms. Landes secured a statement(s) from representatives of National NTEU. However, I do not believe that Ms. Landes spoke with anyone from the agency and she made it clear to me that she did not want to speak with Ms. Connerton.

8. I called Ms. Landes on January 24, 2001 and asked if she would interview Ms. Connerton because she had conversations with NTEU representatives -- Ms. Kimberly Moseley and Mr. John McEleney -- which I believed were relevant. Ms. Landes replied that she would do so, only if she felt it was necessary after reviewing certain memoranda. See Crisco Affidavit #2, ¦10.

9. On January 30, 2001, Ms. Landes informed me that the Regional Director was going to dismiss my charge. She told me that: (i) in order to prove a breach of the duty of fair representation, I would have to show that NTEU acted deliberately and bad faith: and (ii) there was no intent on the part of NTEU to undo the settlement. I again asked Ms. Landes if she had interviewed Ms. Connerton and she said she did not need to. I asked if she would accept Ms. Connerton's affidavit so that it could at least be in my case file. Ms. Landes responded that she would not accept Ms. Connerton' s affidavit since it was not necessary. Then Ms. Landes stated condescendingly that "since you're so familiar with our website, refer to FLRA's policy on the scope of the investigation." Ms. Landes told me to take the matter of Connerton's affidavit up on appeal. I was shocked by Ms. Landes' attitude and condescending manner. I wrote a letter to Ms. Landes on January 31, 2001, reflecting our conversations. See Letter from Denise Crisco to Beth Ilana Landes, dated January 32, 2001; Crisco Affidavit #2, ¶¶1 1 and 12.

10. After receipt of this letter, Ms. Landes reconsidered her position and indicated that she would speak to and accept Ms. Connerton's affidavit, but that she did not believe that it would affect the outcome. She spoke with Ms. Connerton and sent her a memorandum, dated February 7, 2001, which in accurately portrayed their conversation. Ms. Connerton wrote a memorandum back to Ms. Landes correcting the inaccuracies and submitted her sworn affidavit for the case file. See Letter from Beth Landes to Terese M. Connerton, dated February 7, 2001; Memorandum from Terese M. Connerton to Beth Landes, dated February 9, 2001; Crisco Affidavit #2 ¦12.

11. On February 13, 2001, Ms. Landes informed me that the Regional Director did not change his mind. See Crisco Affidavit #2 ¡13. On February 22, 2001, a formal denial letter was issued by the Regional Director. In the denial letter, numerous facts were recited and, based upon those facts, the Regional Director concluded that:

Pursuant to Section 71 14(a)(5) of the Statute, NTEU is the exclusive representative for bargaining unit employees in the negotiated grievance procedure. Connerton knew at least as early as December 1999 that a national level representative of NTEU, the exclusive representative, had an objection to her involvement in your grievance. Although Connerton contends that Chapter 65 had the authority to designate her as its representative in the processing of your grievance and that its conduct indicated that it had so designated her, NTEU asserts that the Chapter, its agent, had no such authority. McEleney's May 23, 2000 letter was merely a statement of facts and the law that NTEU had not designated Connerton to participate in the grievance procedure on your behalf. Although the Agency's decision to revoke its offer to pay your attorney fees was based on McEleney's letter, the record evidence does not support your claim that the intent of his letter was to derail your grievance settlement. Rather, the letter was consistent with the Union's legitimate interest in defending its right to designate its representatives in the negotiated grievance procedure, and to ensure that the Union's representatives are primarily responsible to the interests of union and are not the personal representatives of the grievants. There is no evidence that NTEU's refusal to so designate Connerton in this case was arbitrary, discriminatory or in bad faith.

12. The terms of the collective bargaining agreement did not preclude me from representing myself, as long as the union was present, as well as having Chapter 65 allow Ms. Connerton to draft responses and assist me and Chapter 65 in presenting my case.

The pertinent provisions of NORD V (the collective bargaining agreement between IRS and NTEU) are:

(a) Art. 41 governs the Employee Grievance Procedure. Section 13B. provides that "[w]here an Employee ... does not elect to be represented by the Union, the Union will have the right to be present at all informal and formal discussions between the employee and the Employer concerning the grievance."

(b) Art. 41, Section 4A. provides that "[g]rieving employees will have the right to be accompanied. represented and advised by the Union steward or chief steward or chapter president responsible for representing them at whatever step of the procedure a grievance is being heard."

(c) Art. 41, Section 6 provides the following Uniform Grievance Procedure:

Step 1. An informal meeting will be conducted between the employee. the manager and the employer's union steward. If reduced to writing, a meeting will be conducted between the employee. the manager. the employee's union steward. and any other employer and union representative that the parties respectively deem necessary

Step 2. If a meeting is requested, it will be between the division chief or designee. the employee. the employee's union steward. and the chief steward and/or chapter president. and any other Employer or Union representatives that the parties deem necessary.

Step 3. If a meeting is requested, it will be between the head of the office or designee. the employee. the employee's union steward, the chief steward, the chapter president and/or joint council chairperson and/or a National Union representative and any other Employer or Union representatives that the parties respectively deem necessary.

13 Ms. Vera Nigro, then Chief Steward of Chapter 65, recommended to me that I consult with Ms. Connerton. The prior Chapter 65 Chief Steward had totally mishandled my grievance. Action had to be taken quickly. Ms. Nigro agreed that she did not have the time or expertise to prepare my whistle blower case for the grievance procedure. Ms. Connerton and Ms. Nigro agreed to work together to present the grievance. See Connerton's Affidavit ¦¦3, 4 and 5; Nigro Affidavit.

14. Ms. Nigro knew about Ms. Connerton's firm because another attorney in the firm, Michael Barrett, Esq., had represented her and other newly-elected officers of Chapter 65 in a contentious and lengthy dispute with National NTEU that was still ongoing at the time of the facts herein. Ms. Mosely was intimately involved in representing NTEU' 5 interests against the officers of Chapter 65. See Connerton Affidavit ¦2.

15. In her first conversation with Ms. Kimberly Mosely in early December 1999, Ms. Mosely started off by telling Ms. Connerton that she was "robbing" her clients. She assured Ms. Mosely that she was just trying to make sure that their members' interest were not lost in the political fights between Chapter 65 and NTEU. Ms. Connerton also told Ms. Mosely she would not represent Ms. Crisco independently, but rather was going to assist NTEU Chapter 65 in developing and presenting her grievance. Ms. Mosely never told Ms. Connerton that it was illegal for her to assist NTEU Chapter 65. See Connerton Affidavit ¦6. Moreover, Ms. Mosely never communicated to me that I could not retain Ms. Connerton to assist in developing and presenting my grievance. NTEU also never offered to assist me in the development and presentation of my case. The fact is that no one from the Union had assisted me in the processing of my grievance. If I had not retained an attorney to work with and to assist Chapter 65, I probably would have lost my job by now.

16. Ms. Connerton spoke with Ms. Nigro about the exclusive representation issue raised by Ms. Mosely. Ms. Nigro, the Chief Steward, indicated to her that nothing in the collective bargaining agreement prevented Ms. Connerton from assisting Ms. Crisco in drafting the responses and presenting the grievances and Ms. Nigro assured Ms. Connerton that NTEU had no written or otherwise articulated policies preventing NTEU members or Chapters from being advised or assisted by outside counsel. See Connerton Affidavit ¦7.

17. At no time did Ms. Connerton represent me independently. At all times, Chapter 65 representatives participated in strategy meetings, reviewed all documents drafted by Ms. Connerton before they were submitted to the agency and requested that certain changes and additions be made. At no time did Ms. Connerton go to the grievance meetings without the full consent and presence of Chapter 65 representatives. Chapter 65 representatives, Mr. Gerry Feith and Ms. Vera Nigro, formally presented the grievances before management and conducted all settlement discussions. See Connerton Affidavit ¶8.

18. Prior to Ms. Connerton being involved with my grievance, Ms. Mosely told Ms. Connerton that I was not telling her the truth and that I was "forum shopping".

Additionally, she advised Ms. Connerton that NTEU would probably not take my case to arbitration because it only involved a letter of admonishment. See Connerton Affidavit ¶6.

19. Immediately prior to April 27, 2000, NTEU had removed Chapter 65's President Gerry Feith. Further, Ms. Nigro had several personal arbitration cases pending on which NTEU was refusing to go forward. Ms. Nigro had also told NTEU's General President Ms. Colleen Kelley that Chapter 65's members were upset with Ms. Mosely's hostility towards them and their circumstances and, because of this, many of Chapter 65 members with grievances had sought private counsel to assist in representing them before the union and in the handling of their grievances. Ms. Nigro told Ms. Kelley that she was on the verge of a final negotiated settlement with the IRS of my grievance which was going to result in a monetary payment to me. See Nigro Affidavit.

20. On or about April 27, 2000, Ms. Kimberly Mosely and Mr. John McEleney, representatives of NTEU, met with Ms. Vera Nigro, then Chapter 65 President. The purported purpose of the meeting was to talk about pending arbitration cases that had been filed on behalf of Chapter 65 members. At this meeting, Ms. Mosely and Mr. McEleney first informed Ms. Nigro that they were upset with Ms. Connerton's involvement in my case and again accusing her of "robbing" the clients. They also told her that they thought it was illegal and I was not entitled to any money. Ms. Nigro disagreed and said that other union members had sought and received advice and assistance from outside counsel and nothing was wrong with this. Both Ms. Mosely and Mr. McEleney threatened Ms. Nigro, telling her that she had better settle the case quickly because NTEU was going to drop the cases and not proceed to arbitration.

Ms. Nigro was so concerned after that conversation that she sought and received written commitment from IRS regarding the settlement. See Nigro Affidavit.

21. Ms. Nigro was the "negotiator" of the settlement, not Ms. Connerton. Ms. Nigro had received a verbal commitment from the agency to look into obtaining a promotion for me. Ms. Connerton only sent an itemized bill of attorneys' fees to Ms. Vinson, IRS Labor Relations Representative, upon request, after Ms. Nigro authorized the agency to request the same from Ms. Connerton. Ms. Connerton's communications on settlement were solely with me and Ms. Nigro, not the agency. See Connerton Affidavit ¶11; Nigro Affidavit.

22. Both Ms. Mosely and Mr. McEleney knew on April 27, 2000, that there was settlement involving payment of attorneys fees. They also knew that, when the letter was sent on May 23, 2000, the settlement had not been finalized. Despite self-interested statements to the contrary, given the content of John McEleney's May 23, 2000 letter, there can not be any reasonable doubt that its receipt by the higher level agency officials would adversely impact on the finalization of the settlement. To say otherwise is disingenuous. There was no need to send the letter to the Agency. If NTEU believed it could legitimately prevent Chapter 65 and its members from seeking assistance from an outside attorney, it could have done so internally without jeopardizing my settlement.

23. NTEU's position in the May 23, 2000 letter is incorrect. Ms. Connerton knew about NTEU's exclusive representation of IRS employees and worked with the confines of that duty with Chapter 65 to assure that there was no mistake on management's part that she was not acting independently. Ms. Connerton did nothing that could be interpreted otherwise. The IRS did not fail to recognize NTEU as the exclusive representative in the grievance procedure. Furthermore, the agency never provided Ms. Connerton with information about the grievance. Nor did they discuss any matters about the grievance or settlement with Ms. Connerton. Any "discussions" were presentations made by Ms. Connerton, Ms. Nigro and myself to the Agency. The Agency's responses were in writing to myself and Ms. Nigro.

24. Indeed, the agency found Mr. McEleney's letter "surprising" since Ms. Connerton's bill for attorney's fees and expenses, including charges for discussion and meetings with Chapter 65 representatives. See Letter from Len Baptiste to Vera Nigro, dated June 6,2000.

25. After the letter was sent, Mr. McEleney refused to have any discussions with me until June 29, 2000, when he indicated he would schedule a future meeting. That meeting never occurred. Mr. McEleney also told me that he would call Mr. Baptiste and urge him to sign off on the settlement (including payment of attorneys' fees). See Letter from Denise M. Crisco to John McEleney, dated July 6, 2000. To my knowledge, Mr. McEleney never contacted Mr. Baptiste.

26. When Mr. McEleney did speak to Ms. Connerton in June 2000, he was very adamant that no attorneys' fees would be paid to her and that the agency had no authority to pay any money to me. If his intent was not to upset the settlement (i.e. payment of monies to me), then why would he bring this matter up to both Ms. Nigro and Ms. Connerton. See Connerton Affidavit ¦18; Nigro Affidavit.

APPLICABLE LAW

1 The FLRA set forth the standard of fair representation where union membership is not a factor in National Federation of Federal Employees. Local 1453, 23 FLRA 686, 691(1986) ("NFFE") as follows:

Where union membership is not a factor, the standard for determining whether an exclusive representative has breached its duty of fair representation under section 711 4(a)(1) is whether the union deliberately and unjustifiably treated one or more bargaining unit employees differently from other employees in the unit. That is, the union's actions must amount to more than mere negligence or ineptitude, the union must have acted arbitrarily or in bad faith, and the action must have resulted in disparate or discriminatory treatment of a bargaining unit employee.

2. Even in the absence of any hostile motive, a union may still pursue a course of action or inaction that is so unreasonable and arbitrary as to violate the duty of fair representation. See Griffen v. United Automobile. Aerospace and Agricultural Implement Workers of America. UAW, 469 F.2d 181, 183 (4th Cir. 1972).

3. In ALPA v. O'Neill, 499 U.S. 1127, 1130 (1991), the Supreme Court rejected ALPA's argument that a union cannot breach its duty of fair representation without intentional misconduct. The court held that the duty encompasses three district components. A union breaches the duty if its conduct is either "arbitrary, discriminatory, or in bad faith." With respect to the arbitrariness prong, the Supreme Court stated: We think a decision to be non-arbitrary must be: (1) based upon relevant, permissible factors which excludes the possibility of it being based upon motivations such as personal animosity or political favoritism; (2) a rational result of the consideration of these factors; and (3) inclusive of a fair and impartial considerations of the interests of all employees.

See also Vaca v. Sipes, 386 U.S. 171, 188 (1967) ("[T]he exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to avoid arbitrary conduct.").

LEGAL ARGUMENT

A. The Manner in Which the Region Conducted the Investigation Has Resulted in Prejudicial Error.

The charge against a Union of a breach of its duty of fair representation is no doubt very difficult to prove. "Motive", "bad faith", "arbitrariness", etc. are determined by a consideration of all the facts and circumstances. When an aggrieved member brings forth a charge to the FLRA, an unbiased and impartial investigation should be conducted. If after a thorough and impartial investigation of all the facts and circumstances, the Regional Director concludes that dismissal of the charge is warranted, at least the member will have confidence that the "system worked".
Lt

Here, the Field Attorney Beth Landes gave me a difficult time from the very beginning. See Statement of Facts ¦¦3, 4, 5. She refused to provide me with an example of what she considered a proper format.

See Statement of Facts ¦5. I was forced to retain an attorney to represent my interests before Ms. Landes. See Statement of Facts ¦6. Ms. Landes, at the meeting with me and Michael Barrett, expressed disdain for the charge and impatience with us. She was very reluctant to take my statement or to write down the names and telephone numbers of the proffered witnesses who I thought had relevant information. It was apparent to me and my attorney that Ms. Landes had prejudged my claim. See Affidavit of Michael Barrett; Statement of Facts ¦6.

Even after my initial meeting with Ms. Landes, Ms. Landes' investigation appears to have been one-sided. To my knowledge, I do not believe that she contacted anyone from the Agency despite my request that she contact Len Baptiste and Pam Vinson to ascertain what, in fact, the National Union had known about the settlement prior to Mr. McEleney sending the May 23, 2000 letter. I also do not believe that she spoke directly to or received a statement from Ms. Nigro. And she definitely did not want to take a statement from Ms. Connerton, but begrudgedly did so because she knew it would be an issue in this appeal. See Statement of Facts ¶6, 7, 8, 9 and 10. In Ms. Landes' judgment, as long 5 NTEU articulated a reason for its actions, that was enough for her. She did not want to know whether the articulated reason was a fact or not.

I believe that, if an unbiased and thorough investigation was completed evidence would be obtained demonstrating that the articulated reason given by NTEU for its actions were pretextual and that NTEU representatives deliberately sent the May 23, 2000 letter to Ms. Connerton and the Agency for the purpose of preventing the agency from paying monies to me for my attorneys' fees.

B. The Regional Director's Decision Is Based on Erroneous Finding of Material Facts and Did Not Consider Material Facts That Would Have Resulted in Issuance of a Complaint.

Unfortunately, I could not obtain the file which the Regional Director developed during its investigation. Therefore, I do not know what evidence was relied upon. However, there were a number of material facts which were relevant to the motivation of NTEU in sending out its May 23, 206 letter which I did not see were considered in deciding to dismiss my charge.

The NORD V provides, in the Employee Grievance Procedure, Art. 41 that Chapter 65 is responsible for the handling of the grievances in the Step I through Step III stages and the Steward or Chapter President are permitted to designate other Union representatives to attend meetings. The fact that NTEU says that the Steward or Chapter President does not have that authority does not make it so. No written evidence has been provided that requires duly-elected officers of Chapter 65 to seek the permission of NTEU to designate Ms. Connerton as a Union representative in the grievance meetings. The evidence I presented show that Chapter 65 asked for and consented to the assistance of Ms. Connerton in the development and presentation of my grievances.

Although NTEU is the exclusive representative of the IRS employees, I had the right under Art. 41, Section 3B. to elect not to be represented by the Union in filing and processing my own grievance. No where does it state that I needed NTEU's approval to do this.

Other Chapter 65 members have obtained the assistance of outside counsel in preparation of their grievances and they were not treated in the same fashion as I was. See Statement of Facts ¦20.

The serious political rifts between Chapter 65 officers and NTEU adversely affected my ability to obtain adequate representation through NTEU and Chapter 65. See Nigro Affidavit. Ms. Connerton told Ms. Mosely early on that her sole objective was to see that my case got heard and was not caught up in the election disputes. See Statement of Facts ¦15. Ms. Mosely's response was not an offer of assistance by NTEU, but rather a shallow allegation that I was lying to Ms. Connerton and was merely "forum shopping".

See Connerton Affidavit ¦6. She was, I believe, trying to convince Ms. Connerton not to assist me.

If Ms. Mosely was concerned about a violation of NTEU's exclusive representation of duty after Ms. Connerton explained to her in December 1999 what she intended to do, Ms. Mosely or NTEU should have written a letter then to Ms. Nigro, to Ms. Connerton and/or to me explaining their position.

Ms. Mosely made very derogatory and defamatory statements about Ms. Connerton. See Connerton Affidavit ¦¦6 and 11; Nigro Affidavit. Further, Mr. McEleney suggested to Ms. Connerton that Ms. Nigro had sent me to her for other than legitimate reasons. See Connerton Affidavit ¦18. I believe he was alluding to the fact that the Connerton firm had represented the Chapter 65 officers in their election disputes with NTEU. There is no doubt that Ms. Mosely an~ Mr. McEleney showed extreme animosity towards Ms. Connerton. This fact impinges on their motivation in sending the May 23, 2000 letter.

The fact that Ms. Nigro had a meeting with NTEU General President Ms. Kelley immediately before the letter was sent out was relevant to motive.

Ms. Nigro accused NTEU representatives (i.e., Ms. Mosely) of not properly representing members, dropping their arbitrations for no good reason and generally being hostile to Chapter 65 members and their circumstances, causing the members to seek outside counsel. Ms. Mosely and Mr. McEleney were very angry at Ms. Nigro in the meeting a few days later and, at that time, threatened Ms. Nigro and told her she had better settle my grievance quickly.

Ms. Nigro was convinced, based on their veiled threats, that they were going to do something to jeopardize my settlement. See Nigro Affidavit. They may not have said exactly what they were going to do, but at this meeting they did express their opinion that they did not think I was entitled to any damages. See Nigro Affidavit.

Ms. Nigro had informed Ms. Kelley, Ms. Mosely and Mr. McEleney, that the settlement of my grievance was ongoing and that the agency had offered to pay me damages in the amount of my attorneys' fees. See Nigro Affidavit. When the letter on May 23, 2000 was sent out by Mr. McEleney to Ms. Connerton and Agency officials, he knew that it would prevent the Agency from paying me damages. Mr. McEleney' 5 statement that it was not his intent to undo the settlement but just provide a statement of facts and the law belies common sense. There is no doubt, given the content of the letter, that it would adversely impact on my settlement. See Statement of Facts ¦22. If in fact, Mr. McEleney had not thought about what effect it would have on the settlement, then he acted with reckless disregard of obvious consequences.

Even after the May 23, 2000 letter, Mr. McEleney could have contacted Mr. Baptiste and the Agency and authorized the agency to pay me the amount they had agreed in writing. Indeed, he promised he would do so. See Statement of Facts ¦25. However, he never did.

The fact is that Ms. Connerton's representation of myself and Chapter 65 in no way adversely affected the union's interest; however, NTEU has made sure that my interests have been adversely affected.

If these facts had been properly considered, I believe that I presented substantial evidence of NTEU's purposeful discriminatory and arbitrary actions against me which constituted a violation of its duty to fairly represent me.

CONCLUSION:

In conclusion, I request that the Regional Director's dismissal of my charge should be reversed for the reasons stated herein and that the case be assigned to another Field Attorney who would conduct a thorough and impartial investigation into my charges.

Very truly yours,
Denise Crisco

AFFIDAVIT NO.2 OF DENISE CRISCO
FOR APPEAL OF WASHINGTON REGIONAL DIRECTOR'S DECISION
CASE NO. WA-CO-00593

I, Denise M. Crisco, declare the statements made in this affidavit concerning discussions with and voice mail messages from Ms. Beth Landes, attorney FLRA, are true and correct to the best of my knowledge and recollection.

(1) On July 19, 2000, I spoke to Ms. Landes and she indicated that my charge was not acceptable because it was not clear or concise and it needed to be amended. Ms. Landes, in a derogatory and denigrating tone, referred to my charge as "as a form, an attachment and 4 pages and stated that the "charge as is, is just not acceptable." Ms. Landes then proceeded to tell that I needed to amend charge by looking at the instructions and she provided no further assistance. I explained to Landes that I would review the instructions again and amend the charge as she requested.

(2) On July 24, 2000, I filed the 1St Amend Charge with FLRA.

(3) On August 1, 2000, Ms. Landes left me a voice mail message on which she sounded very angry and agitated. Ms. Landes indicated that she received a copy of the ~ charge and we needed to discuss it. Ms. Landes went onto say that "as we spoke the first time Ms. Crisco, in order to amend the charge properly, you need to have a clear and concise statement of exactly what it is that you are alleging. Again, what you have submitted is a 2 page, not clear or concise statement. I need a quick explanation of exactly what it is that you are alleging. You need to have an amended charge as soon as possible."

After listening to Ms. Landes' voice mail message, I was disturbed by her tone of voice and I could not understand why my original charge or the amended charge were not acceptable.

(4) On August 3, 2000, I left a voice mail message for Ms. Landes and requested assistance from Ms. Landes. I asked for an example of a charge which she was referring to.

(5) On August 4, 2000, I tried to contact Ms. Landes to discuss how I was to amend my charge. I wished to discuss with Ms. Landes the outline I prepared for the second amended charge. I left a voice mail message for Ms. Landes which I conveyed my second amended charge. I asked Ms. Landes to return my call because I wanted to be clear in my charge and wanted to go over it prior to filing the charge to ensure that it was acceptable to Ms. Landes.

(6) On August 8, 2000, I decided to designate a representative so that the issue with my charge could be resolved. I felt that Ms. Landes was not providing me with assistance and was pejorative towards me and my charge. I left a voice mail message for Ms. Landes to advise her that I would be designating a representative and again requested an example of what she considered a proper format of a charge so that I could amend the charge as she finds acceptable. I did not hear from Ms. Landes again.

(7) On August 22, 2000, Mr. Michael Barrett, my representative, and I met with Ms. Landes. Ms. Landes for the first part of the meeting was condescending about my charge and tried to discourage me from continuing with my charge.

Ms. Landes explained what the regional director could and could not do with remedies in my case and, even if my charge was upheld, he would probably put it on hold until the outcome of the arbitration. Ms. Landes went onto say this could take years.

Mr. Barrett made several inquiries regarding the FLRA's powers in remedies. Ms. Landes appeared uncomfortable about the inquiries Mr. Barrett was making, and then she changed the subject. I then gave my affidavit.

During the affidavit, I provided Ms. Landes with my witnesses and their phone numbers. I attempted to have Ms. Pamela Vinson added as a witness but Ms. Landes told me that she would let me know if it was needed. I informed Ms. Landes that Ms. Connerton was to also be interviewed. She said she would do so if necessary. At the close of the meeting, Ms. Landes explained what the next steps she was going to take, and several times she omitted Ms. Connerton's name from the list of persons she would be interviewing. I got the impression that Ms. Landes was not interested in speaking with Ms. Connerton.

(8) On January 10, 2001, I called Ms. Landes to inquired about the status of my case. Ms. Landes informed me that she was meeting with NTEU National next week to get their side.

(9) On January 18, 2001, I spoke with Ms. Landes. She was inquiring about a letter dated April 25 to Mr. Baptiste from Ms. Connerton, which the May 25 letter from Mr. Baptiste referenced. I explained to Ms. Landes that I would check through my documents but Ms. Nigro was always in charge of negotiations so Ms. Connerton would not have responded to Mr. Baptiste.

I further explained that all memoranda from Mr. Baptiste were to/from Ms. Nigro as she was handling all negotiations. Ms. Landes indicated that she would have to provide me with an updated affidavit with these facts, and would be faxing it to me for signature. I told Ms. Landes that I did not have any problem doing that.

I asked Ms. Landes if she had interviewed Ms. Connerton yet. Ms. Landes stated that "she did not feel it was necessary to speak with Terry about my case because once a violation occurs then she makes a recommendation to the Regional Director and there is no further investigation."

(10) On January 24, 2001, I called Ms. Landes to convey to her that she really should interview Ms. Connerton because she had conversations with Ms. Kimberly Moseley and Mr. John McEleney that would provide insight as to their motivations. Ms. Landes informed me that if she felt it was necessary after reviewing the memoranda that day that she would then contact Ms. Connerton.

(11) On January 30, 2001, Ms. Landes informed me that the Regional Director made a decision on my case and he was going to dismiss the charge. She asked me if I wanted to dismiss my charge. Ms. Landes told me that the case law for DFR requires me to prove that the union acted in bad faith and deliberately. She told me that the union did not show bad faith because there was no intent to undo the settlement. Ms. Landes said that there was no violation of the law in Mr. McEleney sending the letter to Mr. Baptiste. I conveyed to Ms. Landes that I would get back to her with my decision.

I called Ms. Landes and explained to her that I felt it was important for her to interview Ms. Connerton, and inquired if she would accept Ms. Connerton's affidavit so that it could at least be included in my case file. I expressed to Ms. Landes that I was concerned abut Ms. Connerton's affidavit not being in the case file because of my intent to appeal the decision. Ms. Landes responded that she would not accept Ms. Connerton's statement as it was not necessary. Ms. Landes stated condescendingly that since "you're so familiar with our website, refer to FLRA's policy on the scope of the investigation."

Ms. Landes told me that I could address the issue of Connerton's statement in my appeal.

(12) On January 31, 2001, I sent Ms. Landes a memorandum which conveyed my repeated attempts to have Ms. Connerton's affidavit taken and the importance of Ms. Connerton's affidavit. See attached letter.

Ms. Landes called me and advised me that she received my memorandum and now wanted to take Ms. Connerton's statement but she didn't think it would change the outcome.

(13) On February 13, 2001, Ms. Landes informed me that the Regional Director did not change his mind even after reconsidering the new information as she had told me before. Ms. Landes sounded annoyed.

4/26/01 , Denise M. Crisco

Date Signature

DECLARATION OF
MICHAEL BARRETT

Michael Barrett, under penalty of perjury, declares as follows.

1. I am an attorney admitted to practice in the District of Columbia. I have been engaged in the practice of law representing workers and unions exclusively for the past 16 years. I have extensive experience in litigating duty of fair representation claims before the federal courts and federal agencies including the National Labor Relations Board and the Federal Labor Relations Authority, in this area and across the country.

2. Following the events described elsewhere by my law partner, Terese Connerton, I agreed to assist Denise Crisco in presenting her unfair labor practice charge against the National Treasury Employees' Union to the FLRA. Ms. Crisco had described to me her attempts to pursue her charge with the Authority, and her belief that she was being dismissed by the Authority's agent without fair consideration.

3. My initial reaction was that Ms. Crisco was overstating the problem, and that any issue likely stemmed from lack of communication. My assessment was that she had a strong prima facie case of arbitrary and discriminatory treatment by the National Union, based primarily on the Union's statements to Ms. Connerton. I agreed to accompany Ms. Crisco to her next interview with the FLRA agent handling her case.

4. Ms. Crisco and I met with Authority attorney Beth Landes in August, 2000, ostensibly for Mrs. Landes to take down Ms. Crisco's statement and to otherwise investigate the charge.

From the outset, Ms. Landes displayed disdain for the charge and impatience with Ms. Crisco and me. She made it evident that my presence was not welcome. Before hearing Ms. Crisco's detailed statement and our summary of the evidence that could be offered by Ms. Connerton and others, Ms. Landes launched into an elaborate explanation of the difficulties in pursuing the charge. She pointed out that it was difficult to show that a union's conduct breached the duty of fair representation, that the union was required only to show that its conduct had some reasonable basis, and that the union was entitled to deference. When we persisted in wanting to pursue the charge, she explained that no effective remedy would result, that the Authority would have to await the outcome of the National Union's handling of her grievance, and that the National Union's handling of her grievance and that the National Union could, and likely would, sit on the grievance for years. I expressed my disagreement with Ms. Landes on the limited ability of the Authority to act until the National Union had finished. My comments plainly annoyed Ms. Landes. Only when we again insisted, did Ms. Landes proceed to take Ms. Crisco's statement, which she did in a professional and competent manner.

5. However, despite our repeated explanations that the best evidence of the National Union's motives for undermining Ms. Crisco's grievance settlement were the statements made by Union representatives to Ms. Connerton, Ms. Landes repeatedly indicated that she did not believe Ms. Connerton' 5 testimony was necessary. At several points, Ms. Landes summed up her plans for further investigating the charge, each time failing to mention an interview of Ms. Connerton. It was only on my repeated insistence that Ms. Landes was willing to agree to interview Ms. Connerton or even to take down her contact information.

By the end of the interview, there was no longer any question that Ms. Landes' attitude towards Ms. Crisco and her case were not the result of a failure to communicate our case or lack of understanding on her part. Both Ms. Crisco and I left the interview with the distinct impression that Ms. Landes had no intention of pursuing the charge with an open mind, and I advised Ms. Crisco that she should expect the investigation to go nowhere.

6. I no longer represent Ms. Crisco and I do not make these statements lightly or eagerly. I have had many positive experiences with FLRA agents, both in the Washington Regional Office and elsewhere. Regardless of the outcome of the particular case, I always believed I had received a fair hearing. My experience with Ms. Landes in this case left me with the firm impression that she was not approaching the case on the merits, but from a desire to dispose of the case prematurely in favor of the National Union. Never in my experience has a representative of a regulatory agency treated a charge or complainant with such inexplicable and unwarranted disdain. I have no doubt that Ms. Landes' evident prejudgement undermined the fairness of her investigation and her recommendation to the Regional Director in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 26, 2001

Michael Barrett

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE
TECH WORLD PLAZA NORTH
800K Street, N.W.. Suite 910
Washington, DC 20001-8000
(202)482-6700 FAX. (202) 482~6724

February 7, 2001

Ms. Therese Connerton
ViA FAX (202)342-3434

Re: National Treasury Employees Union and Denise M. Crisco (md.) Washington, DC Case No. WA-CA-00593

Dear Ms. Connerton:

This letter confirms our telephone conversation of February 7, 2001.

You stated that you are not in the position to know of evidence of whether NTEU has authorized outside counsel in cases bargaining unit employees grievances other then Ms. Hatch and Ms. Crisco. You further stated that Ms. Nigro, President of Chapter 65 told you that she was authorized to retain you to work with her within the grievance procedure. This is the only evidence that you know of of outside counsel being retained by NTEU for purposes of the grievance procedure

As per our conversation, please sign and date the affidavit you prepared and faxed me earlier. Please then fax back to me as well as mailing the signed original.

In addition, If anything in this letter is inaccurate or does not accurately reflect what we discussed, please contact me in writing by the close of business February 5, 2001 If the information in this letter is correct, please sign the bottom of this letter, indicating that the contents are accurate, and fax back to me at (202)482-6724. You may contact me at (202)482-6702, ext. 20. You may e-mail me at blandes@flra.gov.

Sincerely
Beth Ilana Landes
Field Attorney

MEMORANDUM

To: Beth Landes, Esq.
Field Attorney, FLRA

From: Terese M. Connerton

Subject: NTEU and Denise M. Crisco (IND.), Washington. D.C.
Case No. WA-CA-00593

Date: February 9, 2001

The information in your February 7, 20001 letter to me is not correct. My understanding is that several grievants retained their own attorneys to assist them and the union in the presentation of their cases. Indeed, Chapter 65 has worked with other attorneys, not just myself. NTEU National is not the entity that processes grievances; it is the NTEU Chapters that do. Chapter 65 authorized me to assist in the clients' grievances. NTEU National was not in a position to tell the members they couldn't retain outside counsel to advise them or that their outside counsel could not consult with and offer advice to the Chapters presenting the grievances. If NTEU National took this position, they should have informed Ms. Crisco, Ms. Hatch, and myself which they failed to do prior to sending Mr. McEleney's letter to me and the agency. Also, as a clarification, Chapter 65 did not "retain" me (i.e., attorney-client relationship and payment of fees); Ms. Crisco and Ms. Hatch retained me. However, I was representing both their interests. Please call Vera Nigro at (202) 283-6179 to confirm this.

I also informed you yesterday that I was fully aware that NTEU was the exclusive representative of the IRS employees. I kept strictly within those bounds. Not only have I practiced labor law for 20 years, but I worked as a union steward that processed grievances and arbitrations. I knew what I could and could not do.

On a final note, in the 20 years of my practice working with unions and union members, I have never once encountered such hostility from union representatives towards the members and myself as I did with Ms. Mosely. I have also never seen a union so recklessly ignore their members' merest. NTEU was not legally or otherwise justified in knowingly and purposefully interfering with Ms. Crisco's or Ms. Hatch's settlement. The reasons NTEU National have proffered are contradicted by the face of the facts and are legally deficient. Even if true, NTEU's interests could not have been protected without adversely affecting the grievants' rights under the collective bargaining agreement.

City of Washington)
) ss:
District of Columbia)

AFFIDAVIT OF TERESE M. CONNERTON

I, Terese M. Connerton, being duly sworn, do hereby say:

(1) I am attorney associated with the law firm of Schmeltzer, Aptaker and Shepard in Washington, D.C. Prior to October 1, 2000, I was a partner in the firm of Connerton & Ray in Washington, D.C. Connerton & Ray was a union-side labor and employment law firm.

(2) Prior to my representation of Ms. Denise Crisco and Ms. Ada Hatch, another attorney in the Connerton & Ray firm, Mr. Michael Barrett, had represented the newly-elected officers of NTEU Chapter 65 in a contentious and lengthy dispute with National NTEU. The other slate of candidates for office had challenged the election of Mr. Barrett's clients as officers of NTEU Chapter 65 on a variety of grounds. Mr. Barrett filed a response to the election protest with National NTEU. Ms. Kimberly Mosely, on behalf of National NTEU, conducted an investigation of the protest and recommended a rerun of the election. Ms. Kimberly Mosely also was in charge of overseeing the new election. After the rerun, several of Mr. Barrett's clients, but not all, won the second election. During the conduct of the second election, there were several heated arguments between Mr. Barrett and his clients (Ms. Vera Nigro and Mr. Jerry Feith) and Ms. Mosely. Thereafter, challenges were filed with the Department of Labor by Mr. Barrett's clients regarding the propriety of the decision to rerun the election.

Eventually, the Department of Labor resolved the dispute against Mr. Barrett's clients in the summer of 2000.

(3) On or about September 1999, Ms. Vera Nigro, the Chief Steward of NTEU Chapter 65, brought Ms. Denise Crisco to my office. Ms. Crisco had stated to me that, on or about March 12,1999, she had received a notice of proposed disciplinary suspension from her prior supervisor, Ms. Donna Laiti. Another NTEU Steward Roberta Bondzie had apparently attempted to schedule an oral reply, but had failed to do so. Ms. Bondzie then informed Ms. Crisco in August 1999 that management was willing to retract the suspension if Ms. Crisco was willing to accept a letter of admonishment to be placed in her file. When Ms. Crisco rejected the offer, she was told that she would have to provide an oral reply.

(4) Ms. Nigro and Ms. Crisco had informed me that the case involved a whistleblower claim and that both the NTEU Chapter 65 and Ms. Crisco believed that they needed assistance in preparing the case to go through the grievance procedure. They also indicated that Ms. Ada Hatch likewise had an identical issue, but that the agency had already issued her a formal written admonishment. Ms. Crisco described to me how she had been retaliated on her job by the issuance of official reprimands by her supervisors, by her work being taken away from her and by the constant harassment of her supervisors. Ms. Crisco believed that these actions were taken against her because she refused to do things which she believed were illegal.

(5) I reviewed the voluminous documentation provided to me by Ms. Crisco and, based thereof, I concluded that she had a viable whistleblower claim. I agreed to assist Ms. Crisco and NTEU Chapter 65 in preparing a written response because I did not believe, given the detailed charges made against Ms. Crisco and the amount of documentation, that an oral reply would have been feasible or efficacious. Ms. Vera Nigro requested that she be able to review the response and make any changes she deemed appropriate.

I told her that I had no problem with that since I believed that the union should be a "part and parcel" of the entire process and would be formally presenting the grievance.

(6) In December 1999, I had a conversation with Ms. Kimberly Mosely regarding Ms. Denise Crisco's and Ms. Ada Hatch's case. Ms. Mosely first accused me of "robbing the clients" and said that there was no reason for my involvement in their cases since NTEU was the exclusive bargaining representative of IRS employees. I explained to Ms. Mosely that Ms. Crisco, Ms. Hatch and Chapter 65 believed the cases were very complicated and they needed assistance in presenting the grievances. Also, given the political fights between National NTEU and NTEU Chapter 65, Ms. Crisco and Ms. Hatch did not believe that the NTEU Chapter 65 representatives or the National NTEU had the commitment to present their grievances in a satisfactory manner. Further, I assured Ms. Mosely that I was not going to represent Ms. Crisco or Ms. Hatch independently, but rather would assist NTEU Chapter 65 in developing and presenting their grievances.

Ms. Mosely then proceeded to tell me that I did not know the true facts about what had gone on with Ms. Crisco's and Ms. Hatch's cases. She said Ms. Crisco and Ms. Hatch had not provided me with the full story of why they were written up. She said that my clients were "forum shopping" because they had tried to pursue their complaints through other avenues. I told Ms. Mosely that I didn't know what she was talking about and that my impression of both clients was that they were credible. They were both outstanding employees before these incidents. I had objectively looked at the documentation provided by Ms. Crisco and Ms. Hatch and that it was obvious to me that they had been "railroaded" and false charges were "trumped up" against them.

Ms. Mosely said that NTEU would probably not take their cases to arbitration because they only involved a letter of admonishment which would be out of their records by the time the arbitrations were completed. In Ms. Mosely's view, it would not be worth NTEU's efforts to pursue the arbitrations of Ms. Crisco and Ms. Hatch. I responded that, in my opinion, the union had an interest in assuring that its members are not retaliated against for their legitimate actions. At no time did Ms. Mosely tell me that if I proceeded to assist NTEU Chapter 65, Ms. Crisco and Ms. Hatch in the manner I explained, NTEU National would prevent me from doing so.

(7) After my conversation with Ms. Mosely, I reviewed the collective bargaining agreement and I spoke with Ms. Vera Nigro. Ms. Nigro and I agreed that NTEU Chapter 65 would be the representative of Ms. Crisco and Ms. Hatch and I would assist NTEU Chapter 65 and the grievants in drafting the responses and presenting the grievances.

Further, Ms. Nigro stated that nothing in the collective bargaining agreement precluded this and she assured me that NTEU had no policies preventing NTEU members or Chapters from being advised by outside counsel.

(8) I drafted a Response and Rebuttal which was reviewed by Ms. Vera Nigro and Mr. Jerry Feith, then President of NTEU Chapter 65. Ms. Nigro made several changes before she submitted it to the agency. The agency issued a Letter of Admonishment and, on February I, 2000, I attended a Step 2 grievance meeting with the agency with the consent of Chapter 65. The meeting was attended by Ms. Denise Crisco, Ms. Vera Nigro, Mr. Jerry Feith and myself. Ms. Vera Nigro took the lead in defending Ms. Crisco. When I spoke, I indicated that I was representing both NTEU Chapter 65's and Ms. Crisco's interests.

(9) The agency upheld its decision to issue a Letter of Admonishment; therefore, a Step 3 grievance meeting was held with the agency on March 23, 2000. Ms. Denise Crisco, Ms. Vera Nigro and myself attended. Again, Ms. Vera Nigro took the lead in defending Ms. Crisco. When I spoke, I again reiterated that I was representing both Chapter 65's and Ms. Crisco's interests. The agency, at that time, agreed to review Ms. Crisco's and Ms. Hatch's grievances together since Ms. Nigro had argued that the cases were interrelated.

(10) In response, the agency agreed to settle Ms. Crisco's and Ms. Hatch's grievance by rescinding the letter of admonishment and the payment of a certain amount of attorneys fees to each client.

(11) Ms. Vera Nigro called me sometime in April 2000 and told me that Ms. Kimberly Mosely had vehemently argued with her regarding my participation in the grievance proceedings. Ms. Mosely thought that Ms. Nigro should not have allowed me to go to the meetings with the agency. Ms. Mosely called me a "robber and thief." Ms. Nigro believed that Ms. Mosely would attempt to keep the settlement from going through. I urged Ms. Nigro to get the agency's settlement offer in writing which she did. I told Ms. Nigro that I didn't want Ms. Mosely's animosity towards me to derail the settlement.

(12) On April 14, 2000, Ms. Nigro received a written settlement offer which included settling both Ms. Crisco's and Ms,. Hatch's grievances by rescinding the letter of admonishment and the payment of a certain amount of attorney's fees.

(13) At the end of April 2000, I received a call from Ms. Nigro. She was very upset and said that Ms. Mosely and Mr. McEleney had a meeting with her and "blasted her" for allowing me to represent Ms. Crisco and Ms. Hatch. She said that they had threatened to stop the agency from paying me attorneys fees. Ms. Nigro told them that she had a right as an officer of the Chapter to have me present. I again urged Ms. Nigro to get a written response to the counter proposal from the agency as soon as possible.

(14) On May 25, 2000, Mr. Baptiste agreed in writing to resolve both Ms. Crisco's and Ms. Hatch's grievances by rescinding the admonishment letters and paying to each of them $8,592.

(15) At the end of May 2000, I received a letter from Mr. John McEleney wherein he stated that NTEU, as the exclusive representative, had the sole right to present and process grievances and that the agency's dealings with me in any way constituted an unfair labor practice. This letter was sent to the agency.

(16) At no time prior to receipt of Mr. McEleney's letter did Ms. Mosely or Mr. McEleney call me to tell me to cease and desist, even though they were fully aware from the very beginning of my presence during the grievance procedure and I had called Ms. Mosely several times. Indeed, at no time prior to the negotiation of the settlement did NTEU National tell Ms. Nigro to cease and desist from using me to assist in the development of responses to the grievances or the negotiations. At no time prior to the mailing of Mr. McEleney's letter did they inform Ms. Crisco and Ms. Hatch that they could not retain me to assist in the development of their case.

(17) On or about June 6, 2000, because of Mr. McEleney's letter, the agency reneged on its offer to pay Ms. Crisco and Ms. Hatch money for attorneys fees.

(18) I spoke to Mr. John McEleney in June 2000. He informed me that the agency had no right or authority to pay me attorneys' fees. I informed him that my clients had paid me and that the only persons who were injured by his actions were NTEU's own members. He was not aware of this fact. I questioned why the NTEU National would be contesting the agency's authority to reimburse NTEU's members for damages they incurred. He had no answer. I also asked Mr. McEleney why he and Ms. Mosely didn't just call me, as opposed to writing a letter that would ensure that the agency would not settle the case.

He had no answer. I asked him why the Chapter could not designate someone to represent the grievant' 5 and its interest as permitted in the collective bargaining agreement. He had no answer. I questioned him about what he was going to do now that the settlement was revoked. He had no answer. I asked him why NTEU National was involved in the grievance procedure when normally NTEU National would not be involved until the invocation of arbitration. He had no answer. He did tell me during this conversation that he thought there were "other reasons" why NTEU Chapter 65 brought these clients to Connerton & Ray, given the firm's prior representation of the Chapter officers. I asked him what he was talking about. He had no answer. I told him that my only motives in handling these cases was to assist NTEU'S members in being adequately represented at the grievance level and that his actions which were motivated by animous against my firm and NTEU Chapter 65 officers made sure that their settlement was lost.

(19) I also advised and assisted Ms. Leslie White in the development of her grievance involving a disability discrimination case. I attended a meeting with Ms. Mosely and Ms. White in the fall or winter of 1999. Ms. Mosely did not inform me or Ms. White that I could not advise or represent Ms. White.

(20) I spoke with Ms. Vera Nigro today and she advised me that: (a) she has worked with several outside counsel in the development of grievances; (b) NTEU members have a right to consult counsel and have counsel advocate on their behalf before the union and in the development of their cases; (c) NTEU National had no legal right to interfere with the settlement of Chapter 65 members' grievances; and

(d) National NTEU did not even provide her prior notice of Mr. McEleney's intention to send his letter to the agency.

Further affiant sayeth naught,

Terese M. Connerton

Subscribed and sworn to before me
this 8th day of February, 2001.

Susan H. Thompson
Printed Name -

Signature - Notary Public
Notary Public

My Commission expires on 4-30-04

January 31, 2001

VIA FACSIMILE (2O2) 482-6724

Ms. Beth Ilana Landes
Field Attorney
Federal Labor Relations Authority
Washington Regional Office
800 K Street, N. W., Suite 910
Washington, DC 20001

Dear Ms. Landes,

This letter is a follow-up to the conversations we had on January 18, 2001, January 24, 2001, and on January 30, 2001 regarding your statements concerning the affidavit of my attorney, Ms. Terese' Connerton.

During the investigative process, I have requested several times that you interview Ms. Connerton as she had conversations with Ms. Kimberly Moseley and Mr. John McEleney of NTEU, and those conversations would provide you with insight into their actions. On January 18,2001, you advised me that you did not feel it was necessary to interview Ms. Connerton as once a violation was found, you would then issue your recommendation to the Regional Director. On January 24, 2001, I again stressed to you that you should speak with Ms. Connerton. You advised me that if you felt it was necessary after reviewing the memorandums that I had faxed to you that you would contact Ms. Connerton.

On January, 30, 2001, after you advised me that the Regional Director has made his decision, I again conveyed to you that I felt it was important to interview Ms. Connerton, and inquired if you would accept Ms. Connerton's affidavit so that it could at least be included in my case file; I also advised you that I was concerned about Ms. Connerton's affidavit not being included in the case file because of my intent to appeal the Regional Director's decision. You advised me that you would not accept Ms. Connerton's affidavit as it was not necessary. You referred me to FLRA's policy on the scope of the investigation, and also advised me that I could include this issue in my appeal.

If you have any questions, please feel free to contact me at work on (202) 283-6611 or at home on (703) 799-0058.

Sincerely,

Denise M. Crisco

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE
TECH WORLD PLAZA NORTH
800 K Street, N.W., Suite 910
Washington, DC 20001-8000
(202) 482-6700 FAX: (202) 482-6724

June 30, 2000

Mr. John Laird
43 Courage Lane
Stafford, VA 22554

Dear Mr. Laird:

This is in reference to your letter of May 25, 2000 concerning the conduct of our agent, Tom Bianco during investigation of your charge, WA-CO-00308.

I have conducted an internal investigation and I have concluded that your description of Mr. Bianco's behavior is partially substantiated. Please be assured that I do not condone the manner in which Mr. Bianco conducted himself in this case. Your actions did not warrant shouting and nothing that you did jeopardized the office security as to require that security guards be called. On behalf of the Region I offer my apologies.

Mr. Bianco's behavior notwithstanding, I have decided to let stand the dismissal of your charge. The record does reflect that you had been advised prior to your meeting with Mr. Bianco that Mr., Jerry Feith could not represent you in your charge and that you could not represent Mr. Feith in his charge.

At the meeting you were again advised that your statements would be taken separately and after receiving those instructions, you refused to provide a statement without the assistance of Mr. Feith.

The limitations imposed by Mr. Bianco were reasonable and within his authority. Refusal to comply with an agent's conditions for an investigation constitutes a refusal to cooperate, which was the basis for the dismissal of your charge.

Sincerely your
Michael W. Doheny,
Regional Director

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

Case No. WA-CO-00308 Date Filed: 2-29-00

Since on or about September l,1999 the National NTEU by its agents and representatives have committed acts which constitute an unfair labor practice against John Laird. Such incidents and events include, but are not limited to the National Executive Vice President declaring that he and his compatriot were out to get rid of the current FEITH administration by any means, of which Mr. Laird is a part,as well as force the chapter into receivership. Since this declaration on September 1, 1999 and including that day where the National Executive Vice. President (Frank Ferris) threw the NTEU Chapter 65 President (Jerry Feith) and barred the NTEU Chapter 65 negotiation team member out of the bargaining session concerning the local 65 AWARDS.

National NTEU agents then signed an awards agreement on September 30, 1999 without further discussion or consultation with the local 65 chapter. The September 1, 1999 incident where the National Executive Vice President was angered was because Chapter 65 disagreed with the National NTEU's position . The actions of the National Executive Vice President of NTEU and the National Negotiator of that issue caused the creation of a bad agreement which does not meet the needs of the Chapter 65 constituents who were the largest group affected by that agreement. As well as problems between the local and the labor relations office from the demonstration of September 1, 1999.

Since that September 1,1999 incident other negative actions by the National union which constitute interference and an unfair labor practice by the union against Mr. Laird, (when the union causes or attempts to cause an, employer to act against employees in order to influence union activity) have occurred, included, but not limited to the National NTEU refusal to arbitrate Mr. Lairds' religious discrimination case. And the Agency further giving Mr. Laird problems over the use and earning of religious time while being in the union.

Where the National Union shows a disregard for Constitutional Issues, such as religious time in the workplace, misuse of inspection, due process violations, privacy violations, compounded problems will persist and rise in other areas that affected many other employees throughout that unit which breach their duty.

John W Laird	John W Laird	2-29-00
Type or print name	Your signature	Date

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

Case No. WA-CO-00310 Date Filed: 2-29-00

Since on or about September 1, 1999 the National NTEU by its agents and representatives have committed acts which Constitute an unfair labor practice against Jerry Feith and NTEU Chapter 65. Such incidents and events include, but are not limited to the National Executive Vice President (Frank Ferris) declaring that he and his compatriot were out to get rid of the current FEITH administration by any means, as well as force the chapter into receivership. Since this declaration on September 1, 1999 and including that day where the National Executive Vice President (Frank Ferris) threw the NTEU Chapter 65 President (Jerry Feith) and barred the NTEU Chapter 65 negotiation team member out of the bargaining session concerning the local 65 AWARDS.

National NTEU agents then signed an awards agreement an September 30, 1999 without further discussion or consultation with the local 65 chapter. The September 1, 1999 incident where the National Executive Vice President was angered was because Chapter 65 disagreed with the National NTEU's position . The actions of the National Executive Vice President of NTEU and the National Negotiator of that issue caused the creation of a had agreement which does not meet the needs of the Chapter 65 constituents who were the largest group affected by that agreement. As well as it caused more severe problems between the local chapter , the labor relations, and the local management all from the demonstration of September 1, 1999 by the National Executive Vice President.

Since that September 1, 1999 incident other negative incidents to turn the chapter into a downward spiral have been on the rise. Such actions by the National union which constitute interference and an unfair labor practice by the union is when the union causes or attempts to cause an employer to act against employees in order to influence union activity have occurred, included but are not limited to the National NTEU refusal to arbitrate religious discrimination case. The Agency further giving problems over the use and earning of religious time while being in the union, more instances where management is railroading employees with unreasonable penalties and without due process

Where the National Union shows a disregard for Constitutional Issues, such as religious time in the workplace, misuse of inspection, due process violations, privacy violations, compounded problems will persist and rise in other areas that affected many other employees throughout that unit which breach National's duty to the employees.

Jerry Feith	Jerry Feith	2/29/00
Type or print name	Your signature	Date

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

Case No. WA-CO-00653 Date Filed: 8/2000
UNION

Since on or about February 9, 2000, and continuing, the National Union by its agents and representatives committed and unfair labor practice violating 5 U.S.C. 7102, 7114, 7116 (b) 1, 2, 3, 4, 7, 8 by colluding with and influencing the IRS Agency against this employee and union official for the exercise of her rights and duties under the statute, because of her political views, her questioning authority within the IRS and the National NTEU, because she has an independent mind and does not hesitate to mention when she finds something wrong, as well as for her opposition in running in the August 1999 National Elections against the current incumbent National Leaders Colleen Kelley and Frank Ferris.

The National union breached its duty of fair representation by failing to aggressively address, process or investigate aggrieved situations this employee had against the IRS resulting in the Agency being able to more severely adversely affect this employees (E) standing with the Service.

In and around February 9,2000 the National union counsel knew the agency would be adversely affecting this employee and the National Union failed to disclose such facts to the employee. Allowing the whole matter to manifest into additional harm to this individual and their standing with Service, because of political hostile motivation from the National NTEU.

In and around February 14,2000 Ms. Nigro was told of the conspiracy between the IRS and National NTEU, that had manifested her current situation. An IRS Officer who was party to the ill intentions of Commissioner Charles Rossotti and his requested order to adversely affect this employee, stated it was known that Ms. Nigro did about 92% of the work in Chapter 65 and that if something would achieve her demise that would adversely affect the Chapter, the current Chapter President Mr. Feith (whom National NTEU despised) and those it represented. (It is again stated for the record these union incumbents were politically disfavored by both the IRS National Office Management Charles Rossotti and the National NTEU for their vocal and critical views where they felt Mr. Rossotti and/or the National NTEU was wrong. We support this claim by the running in the August 1999 National Election of Officers, this group challenging election decisions of the prior National President and the current National President, in such forums to include but which are not limited to FLRA, DOL, MSPB, etc. The IRS was laid out in detail to Ms. Nigro, and it included, the Agency was out to get at Mr. Feith, and Ms. Nigro as well as to cause conditions to put the Chapter into a vulnerable state where the National NTEU could come in and take over (i.e. receivership) control. This fit the exact comments made in anger by Frank Ferris on September 1,1999 to Mr. Feith and Mr. Laird, see WA-CO-00308. To ensure this plan would work the Commissioner wanted National NTEU to support him by ensuring they did not process Ms. Nigro's cases against the Agency. National NTEU agreed to do this because they did not want to damage their relationship with Charles Rossotti and that they were convinced supporting Charles Rossotti and not supporting Ms. Nigro they would benefit, because Charles Rossotti wanted Ms. Nigro gone.

BEST AVAILABLE COPY

Ms. Nigro was told they (the National Union) would stonewall and consistently make up excuses not to process her case. To date this is exactly what has occurred. On February 15, 2000 the National NTEU President knew of Ms. Nigro's adverse conditions and did nothing to help resolve her issues. (It was well known and documented in their own National News Publication "the Bulletin" that Ms. Kelley flew (literally) to support other chapter president's). Ms. Kelley did not present such concern for Ms. Nigro. Two months later when Ms. Nigro met with Ms. Kelley approximately April 18,2000, Ms. Kelley informed Ms. Nigro she knew she had a critical situation, but Ms. Kelley stated "I really haven't taken time to even look at your case". Ms. Nigro knew from these comments that the nonsupport plan she was told about was truly happening as described. Ms. Nigro informed Ms. Kelley she was keeping a good humor about the whole situation. Ms. Nigro informed Ms. Kelley of her hearing that it was Mr. Rossotti's plan to deliberately come after her. Ms. Kelley did not comment looked nervous, and took a few notes. After this conversation with Ms. Kelley, Ms. Nigro informed one of her attorney's about the meeting and how Ms. Kelley's reaction showed exactly how she did not care and was not going to support Ms. Nigro.

It was one week after this that Ms. Nigro had a meeting regarding her's and other cases with Kim Moseley and John Mc Eleney. They were hostile, tried to intimidate and threaten Ms. Nigro. Attacking her case and deliberately trying to find ways to protect the Agency against the intensity of the issues raised by Ms. Nigro's cases. Mr. McEleney and Ms. Moseley were unreasonably hostile giving Ms. Nigro no true hope that she would obtain a fair hearing, the two National Staff personnel consistently wanted to fail to see obvious relevance of the violated contract provisions.

It was clear to see the Agency's non-support plan with the National NTEU in tow, and their helping management against this employee as described to Ms. Nigro back in February was continuing to manifest itself even more by the National union's actions and comments of this late April meeting. Ms. Nigro ensured all conversation were archived and presented to other attorney's.

April-May-June, July August, 2000

It is shall be an unfair labor practice and a breach of duty for the union for Ms. Kelley to put a less qualified and hostile individual in charge of the case after it was originally being handled by an experienced attorney who with Ms. Nigro created the strategy for the cases. This new individual Mr. McEleney, was out to derail solid strategy and not process the cases, he consistently commented he would not process her cases and he would not adhere to the strategy best able to support a win for her issues. He declared this intention in a late May meeting with Ms. Nigro and another Chapter 65 staff person. Ms. Nigro informed Mr. McEleney she felt he was not an advocate for her or the members she represented and sent him correspondences not to close out her Chapter's arbitration cases. Ms. Nigro wrote letters to both Mr. McEleney and Ms. Kelley describing the situations and conditions that were going on and her dissatisfaction with the actions of the National Union. Other Chapter 65 members also wrote Ms. Kelley and basically felt they were blown off, because the members were never given true answers to their inquiries or concerns from Ms. Kelley.

Ms. Nigro informed Mr. McEleney that he was not an advocate and did not understand the appropriate issues to process the cases.

Mr. McEleney began derailing other Chapter 65 cases, of those who politically supported Ms. Nigro, in prior local elections.

Ms. Nigro has also been met with other harassing actions at the hand and from the influence of this individual and his demeanor, including but not limited to, his influencing current Chapter 65 Board members against Ms. Nigro to disrupt Chapter meetings, and his having members.

It shall be an unfair labor practice for a National Union to fail to process a grievance due to personal hostilities/animosity. The National union is obligated to represent all employees fairly and equitably in accord with the duty of fair representation clause. Since there is evidence that the National Union Officers and staff have been personally hostile and have acted in other than good faith an unfair labor practice has occurred.

Failure to represent/refusing to process employee's grievances, due to National Union's collusion with the IRS Agency, which caused more severe adverse actions against this employee, because of a deal they cut with Charles Rossotti, Commissioner Internal Revenue from his request that the National NTEU not support this employee in her cases against the Agency, is acting in other than good faith and constitutes an unfair labor practice.

Vera Nigro	Vera Nigro	8/2000
Type or print name	Your signature	Date

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

Case No. WA-CO-00-0035 Date rev Filed: 12/14/00

Since on or about September 14, 2000, National Treasury Employees Union (NTEU), by its agents and representatives, specifically Calvin Pollard and the Fare Card Team, and continuing, committed unfair labor practices in violation of sections 7116(b)(1), (2), (3) and (8) of the Federal Service Labor-Management Relations Statute (Statute) by:

1) On or about September 14, 2000, National Treasury Employees Union, through its agent Calvin Pollard, violated the Statute by posting election material which disclosed personal and private information about Ms. Vera Nigro throughout the main IRS building and the New Carrollton Federal Building. This action violates NTEU's duty of fair representation to its members, and sends a chilling message to other employees, by creating an intimidating and coercive environment where employees looking to run for union official positions or participate in the union will have their private lives adversely affected if they exercise their rights under the Statute. This violates sections 711 6(b)(1) [independently] and (8) of the Statute.

2) On or about October 2, 2000, NTEU, through its agent Calvin Pollard, caused the agency to discriminate against Vera Nigro by cutting off Ms. Nigro's voice mail access. To date this access has not been restored.

This action is a violation of section 71 16(b)(3). It is also a violation of section 7116 (b)(8) as NTEU violated its duty of fair representation to Ms. Nigro, under section 7114 of the Statute, by treating Ms. Nigro differently from other members of the bargaining unit.

3) On or about October 3,2000 NTEU violated section 71 16(b)(3) of the Statute when it caused the Agency to discriminate against Ms. Nigro and Mr. Laird by changing the locks on the union office.

4) On or about October 10, 2000, NTEU, through its agent Calvin Pollard, violated the Statute by stating to Ms. Nigro that she was fired as Chief Steward, Director of Negotiations and union steward, because she filed an election appeal. This statement is an independent violation of section 711 6(b)(1) of the Statute. This action also violated the NTEU's duty of fair representation to Ms. Nigro.

5) In general, NTEU, through its national representatives and agents such as Calvin Pollard, has breached its duty of fair representation to its members by wrongfully creating an atmosphere of hostility in which bargaining unit employees can not fairly adjudicate their cases or participate in the union without fear of reprisal. NTEU has colluded and conspired with the Agency to work against Ms. Nigro, Mr. Laird and other members of the Lion Administration in violation of the Statute.

Since on or about October 3, 2000, NTEU Chapter 65 by its agents and representatives, specifically Calvin Pollard, and continuing, committed and unfair labor practice violating 5 U.S.C. 7116 (b) 1, 2, 3,4, and 8, 7114, 7117 by:

Taking retaliatory and disparate actions against John Laird, Vera Nigro and Roberta Bondzie due to political hostility and for them exercising rights under the statute including but not limited to the filing of unfair labor practices against the National NTEU and Chapter 65 and election appeals under the Union Constitutional and Bylaws and the Labor Management and Disclosure Act such actions include, but are not limited to.

On October 5,2000 the NTEU Chapter 65 took unwarranted and discriminatory and hostile actions against Mr. John Laird by violating his privacy, by breaking into his desk and taking personal items of Mr. Laird's as well as violating his time records, credit cards and bank account privacy and security.

Mr. Laird had tried for a couple of days to schedule a time directly with Mr. Pollard starting on October 4, 2000 at 7.30 am to clean out his desk. Each time Mr. Laird called he was promised by Mr. Pollard that someone if not Mr. Pollard himself would be available so that Mr. Laird could collect his personal belongings. However nobody from the new Chapter 65 administration would make themselves available, keep an appointment or call Mr. Laird back so he could collect his items.

Pollard and his administration consistently made themselves unavailable, then changed the locks on the union office door making it impossible for Mr. Laird to clean his desk out.

It took Mr. Laird and his witness calling Security and the Federal Protection Service to open the union office in order for Mr. Laird to get his belongings. It was October 5,2000 when Mr. Laird entered the NCFB office with his witness, the Security officers and the Federal Police that Mr. Laird found that the current union officers (Jim Carr who said he was the only one who had the keys to the office), George Bergmann, Calvin Pollard, Betty King, Joe Durballa, Dave Cash, Julie Devaughn, Tom Garrett, broke into every cabinet and every desk drawer of Mr. Lairds' violating his privacy.

During this week of October 1,2000 - October 6,2000, Ms. Nigro left Mr. Pollard several messages for him to call her it was only on October 5,2000 that Mr. Pollard finally had Mr. Carr call to leave a message on the number she had consistently requested he respond to her on. From October 2,2000 Ms. Nigro kept letting Mr. Pollard know they (Mr. Pollard and crew) interfered in her representational duties when they cut her access to the voice mail she was using for her representation of employees. That she needed to use this alternate box because the agency wrongfully cut her negotiations voice mail for the chapter leaving her with only one voice box the main IR box for use for representation. Although she told these gentlemen she needed access to the system to continue grievance meetings and negotiations and that the box was not just used for collection of voice messages like the one at NCFB had

been used for, they intentionally denied her access to interfere with and restrain her representational activities due to their political hostility, and the political hostility that is being fostered by the National NTEU against her because of her support of bargaining unit employees and filing of unfair labor practices on several cases against the National NTEU, the IRS agency and the Chapter 65, and her running for National Executive Vice President of NTEU.

Ms. Nigro's issues are important because they send a clear message of what these people do to those they dislike because of political differences. Mr. Pollard continued to interfere with Ms. Nigro's representation of the bargaining unit employees by closing down her access, changing the locks on the union doors, failing to notify her, then trumping up lies in which to fire her. Culminating on October 10, 2000 when the first words out of his mouth was that he fired her because "you filed an election appeal". He then stuttered and tried to backtrack with phony excuses.

October 2, 2000-though Mr. Pollard was not even certified as President of the Chapter yet the agency assisted him in cutting off Ms. Nigro's voice mail access. Ms. Nigro left messages for the return of the voice mail access to continue serving the bargaining unit employees especially because she had meetings scheduled all week. The voice mail was not returned.

October 3,2000 - The union office locks were changed, and Ms. Nigro was still locked out from access to voice mail. It was this day the fraudulent certification of the election went in. Ms. Nigro again requested they release the voice message system for representation duties she was performing.

October 4, 2000 - Ms. Nigro received no calls from Mr. Pollard to address her issues or any date in which he wanted to meet with her. Even though she additionally left an address that they could write to her at.

October 5, 2000 - John Laird's privacy was violated by these new union officers deliberately breaking into his dusk and almost his computer. This was witnessed and an FPS report was also taken on their wrongful actions against Mr. Laird and his property.

Mr. Laird had Mr. Pollard/his people sign for keys for both himself and Ms. Nigro as well as Mr. Laird delivered Ms. Nigro's status report for that week for Mr. Pollard. Mr. Carr called Mr. Laird's number late this day to ask Ms. Nigro to call Mr. Pollard. Today again, Ms. Nigro left Mr. Pollard a message that she was out sick today and then she ran over the issues outlined in her update for that week and asked he contact her.

October 6, 2000 - No messages were received from Mr. Pollard for Ms. Nigro. But in a 1 P.M. grievance meeting behind Ms. Nigro's back Mr. Pollard was having Ms. Nigro's access revoked without his telling her. Declared his non-support of Roberta Bondzie to serve in the union, even though her position was restructure appropriate by Ms. Nigro to accommodate Ms. Bondzie's new issues.

WEEKEND.. .NON-WORKDAYS.

October 7, 2000 - Saturday
October 6, 2000 - Sunday
October 9, 2000 - Holiday

October 10, 2000 - the first work day after the Holiday Ms. Nigro finds Mr. Pollard's location and calls him at her own expense. The first words out of Mr. Pollard's mouth is he tells Ms. Nigro she is fired because we filed an election appeal against him.

What Calvin Pollard and the National NTEU are doing is a disgrace and sends a bad message to any one who really wants to assist a union. They are sending very detrimental and coercive messages that if they don't like you, or you don't share their opinion's and follow what they want you can't participate. This goes against everything the statute stands for. Everything they have done to me, Ms. Nigro and Ms. Bondzie has sent messages that they will interfere with, restrain, coerce employees if they excise their rights, that you will be coerced, disciplined, receive reprisal and punishment for the exercise of rights, that you will be discriminated against based on service status, handicapping condition and political affiliation and more.

Vera Nigro	Vera Nigro	revised 12/14/00.
Type or print name	Your signature	Date

Federal Service Labor-Management Relations Statute - FLRA statute

§ 7102. Employees' rights

Bach employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non preferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which--

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat or reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

Labor Relations Authority

APPLICABLE LAW

1. The FLRA set forth the standard of fair representation where union membership is not a factor in National Federation of Federal Employees. Local 1453, 23 FLRA 686, 691(1986) ("NFFE") as follows:

Where union membership is not a factor, the standard for determining whether an exclusive representative has breached its duty of fair representation under section 711 4(a)(1) is whether the union deliberately and unjustifiably treated one or more bargaining unit employees differently from other employees in the unit. That is, the union's actions must amount to more than mere negligence or ineptitude, the union must have acted arbitrarily or in bad faith, and the action must have resulted in disparate or discriminatory treatment of a bargaining unit employee.

2. Even in the absence of any hostile motive, a union may still pursue a course of action 01 inaction that is so unreasonable and arbitrary as to violate the duty of fair representation. See Griffen v. United Automobile Aerospace and Agricultural Implement Workers of America UAW, 469 F.2d 181, 183 (4th Cir. 1972).

3. In ALPA v. O'Neill, 499 U.S. 1127, 1130 (1991), the Supreme Court rejected ALPA's argument that a union cannot breach its duty of fair representation without intentional misconduct. The court held that the duty encompasses three district components. A union breaches the duty if its conduct is either "arbitrary, discriminatory, or in bad faith."

With respect to the arbitrariness prong, the Supreme Court stated: We think a decision to be non-arbitrary must be: (1) based upon relevant, permissible factors which excludes the possibility of it being based upon motivations such as personal animosity or political favoritism; (2) a rational result of the consideration of these factors; and (3) inclusive of a fair and impartial considerations of the interests of all employees.

See also Vaca V. Sipes, 386 U.S. 171, 188 (1967) ("[T]he exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to avoid arbitrary conduct.").

This appeal comes before the General Counsel based on a decision rendered by the Washington Regional Director of February 28, 2001. Upon receipt of that decision we requested an extention of time to file an appeal, which was granted by the authority, and such time frame for the appeal is now due and presented to you here. Based on discussions during the investigation of these series of charges. Both Mr. Laird and Ms. Nigro understood from the Authority investigators, that the Authority would be looking at all 28 case files for a whole picture to ensure they understood filly the conditions and events surrounding each of the individual charges and the background information which affected each case. Therefore, it was a surprise to see that the Washington Regional Director started to perform dismissal closings on our cases when all of the circumstances, reviews and investigations had not been completed or closed on these matters. Ms. Nigro was concerned particularly with the fact that her information was not passed along to the benefit and corroboration of matters she testified to for other employees, Denise Crisco, Ada Hatch, and John Laird.

This issue of information not being passed along pervaded each of the cases in question that the Regional Director closed from January 20 - February 28,2001 surrounding our matters.

This case is one among over 20 others which have been filed with the Washington Office of the Authority surrounding a continuing pattern of events and conditions that occurred within the IRS National Office specifically with regards to certain now former chapter 65 officials and those employees under their representational jurisdiction. The events these former officials believed to be a continuing violation and pattern by the Agency and the National Union working in concert against them and those who supported them.

Again, the clear and obvious pattern which manifests itself in the cases that the Washington Region has closed in relation to these chapter 65 persons (John Laird, Vera Nigro, Denise Crisco, Ada Hatch), starting in January 2001 through February 28, 2001 is that the information provided to the Authority from Ms. Nigro was not passed along in whole to Ms. Landes, Ms. Corrado and Mr. Doheny in order for them/him to make complete their cases files or for a decision to be based on all the facts and evidence with respect to those cases which again were dismissed by the Region during this January to February 28, 2001 time frame, otherwise the information was ignored.

We reassert it was the understanding with regards to this investigation, that with this group of cases the Washington Region would gather and put together all the affidavits, witness interviews and evidence / information on all cases dealing with the events in chapter 65 that took place over the stated time frame involving our cases.

Then review the background documentation, look at the cases on whole to study the pattern emerging from the complaints, before any of the cases were ruled upon. I was surprised when the Region started closing the cases after this was the determined route for the investigation,

More so when I know that all the cases have not even been investigated because I, as a complainant, am still providing information and affidavits on some of them. In speaking with Ms. Nigro she provided a large volume of information to Ms. Levine who was to distribute her information to the other investigators and to Mr. Doheny. Ms. Nigro understood from Ms. Levine that she would be putting the materials provided into case boxes because of the volume. With respect to the affidavits I testimony Ms. Nigro gave to Ms. Levine some were taken directly at the Regional Office in D.C. and others were sent in but confirmed received. Additionally, with regard to Ms. Nigro's affidavits I testimony it was going to be somewhat of an additional burden on Ms. Levine when she had to share and distribute Ms. Nigro's testimony I affidavits to the other investigators and Mr. Doheny because the testimony was taken in a one continuing bulk record format, not on an individual case basis. Ms. Nigro and Ms. Levine did in the end both agree on this format for its continuity because again the investigation was suppose to put all the cases together, review the background information and the pattern that emerged from the cases and then the Region was suppose to start rendering decisions after a look at the whole picture from all the cases. Ms. Nigro again stated that based on the pattern which emerged in the Regional Directors Dismissals on the cases with Ms. Crisco and Ms. Hatch it seems that little if none of the positions of her testimony made it to the investigators and the information especially did not make it to

the Regional Director to make an informed decision on Mr. Laird's cases. From what we can tell, given the time that had passed Ms. Levine may not have been able to ascertain the distinctions related to each case in order to separate and give out the specifics to the other investigators for Ms. Crisco and Ms. Hatch's cases.

On Mr. Laird's cases we determine that the documents sent in to the Authority and confirmed received 12/29/2000, are misplaced or simply were not transferred with the cases file to the Regional Director and those affidavits are either with or not with the box of background documentation supplied by Ms. Nigro in December 2000.

The overall condition which pervades the cases is that the information given was not around in whole or in part at the time theses decision were made by the Regional Director for the cases dismissed by him on Ms. Crisco's, Ms. Hatch's, Mr. Laird and one of Ms. Nigro's cases between this January to February 28, 2001 time frame.

We are re-providing Ms. Nigro's affidavit / testimony and if the boxes of background information can not be located we will be happy to re-provide more copies to the Authority. For that information contact me directly with a fax at (703) 221-0211.

FLRA Cases

Ada Hatch
WA-C0-00 603

Vera Nigro

1)	WA-CA-00652	2)	WA-CA-00699
3)	WA-CO-00653	4)	WA-CO-00655 (3)
5)	WA-CO-1-0015	6)	WA-CO-1-0035

John Laird

1)	WA-CA-00605	2)	WA-CA-00656
3)	WA-CO-00657	4)	WA-CA-00669
5)	WA-CA-01-0006	6)	WA-CA-01-0012
7)	WA-CO-01-0014	8)	WA-CO-0l-0036
9)	WA-CA-01-0033	10)	WA-CO-01-0045
11)	WA-CA-10045	12)	WA-CO-10047
13)	WA-CO-0l-0052	14)	WA-CO-00308
15)	WA-CA-00 69	16)	WA-CA-90717
17)	WA-CA-00669	18)	O-AR-3255

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Supreme Court, U.S.
FILED
JUN 30 2003
OFFICE OF THE CLERK

No. 02-1576

In the Supreme Court of the United States

VERA NIGRO, PETITIONER

v.

FEDERAL LABOR RELATIONS AUTHORITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL LABOR RELATIONS AUTHORITY IN OPPOSITION

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QUESTION PRESENTED

Whether a federal court of appeals has jurisdiction under 5 U.S.C. 7123(a) to review a determination by the Federal Labor Relations Authority not to issue an unfair labor practice complaint.

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OPINION BELOW

The order of the court of appeals (Pet. App. 8) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 25, 2002. A petition for rehearing was denied on January 28, 2003. The petition for a writ of certiorari was filed on April 28, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title VII of the Civil Service Reform Act of 1978 (the Act), Pub. L. No. 95-454, 92 Stat. 1191 (5 U.S.C.

7101 *et seq.*), governs labor relations between federal agencies and their employees. The Act established the Federal Labor Relations Authority (FLRA or Authority), a three-member bipartisan body within the Executive Branch, and gave it a role analogous to that which the National Labor Relations Board (NLRB) plays in the private sector. 5 U.S.C. 7104. The Act requires the FLRA to supervise the collective bargaining of federal employees and to administer other aspects of federal labor relations, including the adjudication of unfair labor practice complaints, negotiability disputes, bargaining unit issues, arbitration exceptions, and representational election matters. 5 U.S.C. 7105(a)(1) and (2); see *Bureau of Alcohol, Tobacco & Firearms* v. *Federal Labor Relations Auth.*, 464 U.S. 89, 92-93 (1983). The FLRA thus ensures compliance with the statutory rights and obligations of federal employees, labor organizations that represent such federal employees, and federal agencies.

The General Counsel of the FLRA acts as the body's enforcement arm. The FLRA has no power to issue unfair labor practice complaints; that power is vested exclusively with the FLRA's General Counsel. 5 U.S.C. 7118(a)(1). The Act provides that the General Counsel shall investigate any allegation that a labor organization or federal agency engaged in an unfair labor practice and "may issue and cause to be served upon the agency or labor organization a complaint." 5 U.S.C. 7118(a)(1). In any case where the General Counsel does not issue an unfair labor practice complaint, the General Counsel must provide the complainant a written statement of the reasons for not issuing a complaint. 5 U.S.C. 7118(a)(1). The Act does not otherwise limit the discretion of the General Counsel in his decision whether or not to issue an unfair labor practice

complaint. Moreover, the FLRA has no authority to review the General Counsel's determination. See *Rizzitelli* v. *Federal Labor Relations Auth.*, 212 F.3d 710, 712 (2d Cir. 2000) (citing *Turgeon* v. *Federal Labor Relations Auth.*, 677 F.2d 937, 938 (D.C. Cir. 1982) (per curiam)).

2. This case concerns several decisions by the General Counsel of the FLRA not to issue unfair labor practice complaints.

a. Petitioner Vera Nigro was an employee of the Internal Revenue Service (IRS) and a local officer of the National Treasury Employees Union (NTEU), Chapter 65. 8/2/01 FLRA Ltr. 1. In February 2000, petitioner was removed from her position with the IRS. *Ibid.* After her removal from federal service, petitioner continued to serve as a union official until September 2000, when she was defeated in a local union election. *Ibid.* Petitioner filed several grievances concerning her termination and other matters pursuant to the procedures prescribed in the NTEU collective bargaining agreement. 8/28/01 FLRA Ltr. 1. Although NTEU initially invoked arbitration over petitioner's grievances, it ultimately determined not to pursue the cases to arbitration. 8/2/01 FLRA Ltr. 1-2.

Petitioner then filed four unfair labor practice charges with the Washington Regional Office of the FLRA relating to these events. 7/16/01, 8/1/01, 8/2/01, 8/28/01 FLRA Ltrs. Three of the charges were filed against the NTEU and concerned both NTEU's decision not to pursue petitioner's grievances to arbitration (see 8/2/01, 8/28/01 FLRA Ltrs.) and the conduct of the NTEU local chapter election which resulted in her ouster as a NTEU official (see 8/1/01 FLRA Ltr.). The fourth charge, filed against the IRS, alleged that

various agency actions interfered with her rights under the Act. 7/16/01 FLRA Ltr.

The FLRA's Washington Regional Office investigated each of the charges and determined that they were all without merit. Accordingly, the Washington Regional Director declined to issue unfair labor practice complaints and notified petitioner of those decisions. 7/16/01 FLRA Ltr. 3; 8/1/01 FLRA Ltr. 3; 8/2/01 FLRA Ltr. 3; 8/28/01 FLRA Ltr. 1. Pursuant to her rights under FLRA regulations, petitioner appealed the Regional Director's determinations to the General Counsel. In each case, the General Counsel denied the appeal. 7/9/02 Gen. Counsel Ltr. 1 (WA-CA-00652); 7/9/02 Gen. Counsel Ltr. 1-2 (WA-CO-01-0035); 7/10/02 Gen. Counsel Ltr. 1; 7/11/02 Gen. Counsel Ltr. 1.

b. Invoking 5 U.S.C. 7123(a), petitioner sought review of the General Counsel's determinations in the United States Court of Appeals for the Fourth Circuit. The FLRA moved to dismiss the petitions for review for lack of subject matter jurisdiction. The court of appeals, without comment, granted the motion and dismissed the petitions for review. Petitioner's request for rehearing and rehearing en banc was also denied without comment.

ARGUMENT

The court of appeals correctly determined that it was without jurisdiction to review decisions of the FLRA's General Counsel not to issue unfair labor practice complaints. This holding does not conflict with any decision of this Court or any other court of appeals. Accordingly, review by this Court is not warranted.

1. Section 7123 provides that "[a]ny person aggrieved by any final order of the [FLRA] * * * may * * * institute an action for judicial review of the

[FLRA's] order in the United States court of appeals." 5 U.S.C. 7123(a). Section 7123 is the only provision in the Act that provides for judicial review of FLRA orders.

a. In the instant case, the court of appeals dismissed petitioner's petition for review for lack of jurisdiction. Pet. App. 8. That decision was consistent with the decisions of every court of appeals to have addressed the question whether a court of appeals has subject matter jurisdiction to review decisions by the FLRA's General Counsel not to issue unfair labor practice complaints. Each of those courts concluded that it was without subject matter jurisdiction because such decisions are decisions of the General Counsel only and do not constitute a "final order" of the FLRA. See *Rizzitelli* v. *Federal Labor Relations Auth.*, 212 F.3d 710, 712-713 (2d Cir. 2000); *Patent Office Prof'l Ass'n* v. *Federal Labor Relations Auth.*, 128 F.3d 751, 752-753 (D.C. Cir 1997), cert. denied, 523 U.S. 1006 (1998); *AFGE, Local 1749* v. *Federal Labor Relations Auth.*, 842 F.2d 102, 105 (5th Cir. 1988) (per curiam); *Martinez* v. *Smith*, 768 F.2d 479, 480 (1st Cir. 1985); *Turgeon* v. *Federal Labor Relations Auth.*, 677 F.2d 937, 940 (D.C. Cir. 1982); *Columbia Power Trades Council* v. *United States Dep't of Energy*, 671 F.2d 325, 329 (9th Cir. 1982).

The most fulsome discussion of the issue is found in the D.C. Circuit's decision in *Turgeon*. There, the D.C. Circuit held:

> The Act provides that an aggrieved person may obtain judicial review in the appropriate court of appeals * * * of "any final order of the Authority." * * * This is the only judicial review provision in the Act. The Act affords the Authority no opportunity to review a decision of the General Coun-

> sel declining to issue an unfair labor practice complaint—it is only upon the issuance of a complaint that the Authority is empowered to exercise its decision-making functions * * * Since the General Counsel has not issued a complaint, and the Authority has not acted at all in this case, it is clear that there is no "final order of the Authority" and hence no decision that we can review pursuant to section 7123.

677 F.2d at 938-939. Petitioner offers no authority for the proposition that the General Counsel's exercise of his discretion not to issue an unfair labor practice complaint may be construed as a "final order of the Authority," and does not otherwise offer any reason to abandon the courts of appeals' settled interpretation of the Act's judicial review provision.

b. Although not cited by petitioner, the Ninth Circuit, relying on a footnote in this Court's decision in *Heckler* v. *Chaney*, 470 U.S. 821, 833 n.4 (1985), stated once that the General Counsel's determination not to issue a complaint is only "presumptively" unreviewable. *Montana Air Chapter No. 29* v. *Federal Labor Relations Auth.*, 898 F.2d 753, 756 (9th Cir. 1990). The Ninth Circuit adopted the view that a decision not to exercise enforcement authority is reviewable when the decision is based either on the agency's conclusion that it lacked jurisdiction or on a general policy "so extreme as to amount to an abdication of its statutory responsibilities." *Ibid.* (quoting *Heckler*, 470 U.S. at 833 n.4).

Other courts, however, have questioned the reasoning of *Montana Air* and its determination that the General Counsel's decision not to exercise enforcement authority is only presumptively—as opposed to absolutely—unreviewable. See *Patent Office Prof'l*

Ass'n, 128 F.3d at 753. ("Lest there be any lingering confusion * * * a decision of the General Counsel of FLRA not to file a complaint is not judicially reviewable given that the statute provides for review only of decisions of the Authority. In *Heckler*, the Supreme Court dealt with jurisdiction under the Administrative Procedure Act * * *. Nothing in *Heckler*—and especially not the Association's favored footnote—affects the reviewability of decisions of the General Counsel under the [Act].") Moreover, *Montana Air* did not purport to distinguish the Ninth Circuit's earlier conclusion in *Columbia Power Trades Council* that "[t]here is no provision in § 7118 for review in the courts of [the General Counsel's enforcement] determination." 671 F.2d at 329. To the extent that the Ninth Circuit's decision in *Montana Air* created an intra-circuit conflict, it is not a basis for an exercise of this Court's certiorari jurisdiction. See *Wisniewski* v. *United States*, 353 U.S. 901 (1957) (per curiam).

In any event, even *Montana Air* fails to provide a basis for jurisdiction in this case. Nothing in the record suggests that the General Counsel either believed he lacked jurisdiction to issue unfair labor practice complaints in response to petitioner's allegations, or that the General Counsel otherwise had adopted a general policy of non-enforcement that amounted to an abdication of his statutory responsibilities. Here, the General Counsel investigated petitioner's many allegations and decided not to file an unfair labor practice complaint only after determining that each of the allegations lacked merit. Even if that were not the case, the unpublished decision in this case could not contribute to any split in the published authorities.

2. The conclusion that decisions by the FLRA General Counsel to file (or not file) unfair labor practice complaints are unreviewable is further supported by the history of the Act—specifically Congress's manifest intent to create, in the FLRA, a public sector analogue to the NLRB. It was the plain intent of Congress to allocate authority among the FLRA and its General Counsel in the same manner as the NLRB and its General Counsel. See S. Rep. No. 969, 95th Cong., 2d Sess. 102 (1978) ("The General Counsel is intended to be autonomous in investigating unfair labor practice complaints * * *. Specifically, the Authority would neither direct the General Counsel concerning which unfair labor practice cases to prosecute nor review the General Counsel's determinations not to prosecute, just as the National Labor Relations Board does not exercise such control over its General Counsel."); H.R. Rep. No. 1403, 95th Cong., 2d Sess. 41-42 (1978) ("The committee intends that the * * * General Counsel be analogous in role and function to the General Counsel of the [NLRB]."); see also *Bureau of Alcohol, Tobacco & Firearms*, 464 U.S. at 92-93. When Congress was considering the Act it did so against the background of this Court's decision that "the [NLRB's] General Counsel has unreviewable discretion to refuse to institute an unfair labor practice complaint." *Vaca* v. *Sipes*, 386 U.S. 171, 182 (1967); see *NLRB* v. *United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 128-131 (1987). Thus, applying the analogy to the NLRB, the D.C. Circuit could similarly conclude of the FLRA, that "Congress intended a decision of the General Counsel declining to issue an unfair labor practice complaint to be unreviewable." *Turgeon*, 677 F.2d at 939. Indeed, each of the other courts of appeals that have addressed the reviewability of the FLRA General Counsel's pro-

secutorial functions has also relied on precedent developed under the NLRB's practices. See *Rizzitelli*, 212 F.3d at 712 n.1; *AFGE, Local 1749*, 842 F.2d at 104-105; *Martinez*, 768 F.2d at 480; *Columbia Power Trades Council*, 671 F.2d at 329.

3. Although petitioner contends that the order of the court of appeals presents constitutional questions, petitioner never articulates how the General Counsel acted in derogation of her constitutional rights.

What petitioner does present is largely a request for error correction. Petitioner's contentions amount to nothing more than disagreements with the legal reasoning and factual findings of the General Counsel. However, where judicial review of agency action is precluded, allegations of legal or factual error are insufficient to confer jurisdiction. See *Boire* v. *Greyhound*, 376 U.S. 473, 481 (1964) (exception to preclusion of judicial review should "not * * * be extended to permit plenary district court review of [NLRB] orders * * * whenever it can be said that an erroneous assessment of the particular facts * * * has led it to a conclusion which does not comport with the law"); see also *Griffith* v. *Federal Labor Relations Auth.*, 842 F.2d 487, 497 (D.C. Cir. 1988) ("garden variety" errors of law or fact will not provide grounds to review agency action otherwise not subject to judicial review).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

DAVID M. SMITH
Solicitor
Federal Labor Relations Authority

JUNE 2003

(3)

No. **02-1576**

Supreme Court, U.S.
FILED
JUL 7 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

VERA NIGRO

Petitioner(s)

V.

U. S. FEDERAL LABOR
RELATIONS AUTHORITY

On Petition For Writ Of Certiorari
To The U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY BRIEF

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. THE CASE PRESENTS SIGNIFICANT UNRESOLVED AND CONSTITUTIONAL QUESTIONS AND CHALLENGES

We can not send in a detailed Reply Brief to oppose the Respondents (FLRA and Solicitor General) as we have not yet received their Opposition Brief . The Court informed us it was filed on 6/30/03. We hoped to receive the Respondent's document over the 4th of July Holiday weekend, but such has not been the case. We send in this Reply Brief to let the Court know we support our Petition for Writ of Certiorari, and send in additional information demonstrating help is needed to better rights for federal employees in this area. Our categories for response in this brief are generic and un-detailed, but will be completed upon the Respondents Opposition Brief being received. Please note they may also change.

A. THE RESPONDENT BASED ITS OPPOSITION ON ___

See statement in **I.** above this page (1).

B. THIS CASE IS NOT CONTROLLED BY _____

See statement in **I.** above this page (1).

II. THE COURT SHOULD GRANT THE PETITION TO RESOLVE THE SIGNIFICANT MATTERS RAISED

See statement in **I.** on page one of this Petitioner's Reply Brief.

CONCLUSION

See statement in **I.** on page one (1) of this Petitioner's Reply Brief.

We believe the Court should grant Petitioner's Petition for Writ of Certiorari as it raises significant constitutional challenges and important matters of a nationwide scope, to include challenges to the laws and procedures that govern FLRA personnel in the non-issuance of ULP's in federal employee cases. Currently many federal employees are deprived of basic adjudication rights.

We ask the Court to read the Appendix in this Reply Brief as it demonstrates the problems Petitioner raised in her Petition are national scope. The additional federal employee case sample is about a group of Houston based IRS employees, that used the FLRA Unfair Labor Practice (ULP) system only to find it gave them no relief, which then lead to an EEO lawsuit which is pending and continuing against both the Internal Revenue Service (IRS) and National Treasury Employees Union (NTEU). Their lawsuit is based on an EEOC Administrative Judge's finding that the IRS and NTEU colluded together to deprive the employees of arbitration hearings and appeal rights on many significant discrimination matters. See DICKERSON ET AL, **App.1 and Robinson DOL Exhibit 2 App 36**

Respectfully submitted,

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APPENDIX

DICKERSON-ROBINSON ET AL, CASE SAMPLE 5TH CIRCUIT 03-20050

ORAL ARGUMENT

The appellants are entitled to oral argument and execution of the Summary Judgment because of the Defendants'-Appellees' continued pattern and disregard for legal rights bestowed individuals by Congress and the Constitution. Appellants relied upon the Appellees to fairly prosecute Title VII employment discrimination under the internal grievance process, however they closed the case and mislead the Appellants to believe that the case was pending arbitration, as a pretext to the discriminatory act of denying arbitration on issues of employment discrimination. The Agency's attorney, Mr. Michael Salyards, states through his declaration, the Defendants-Appellees "recognizing the costs and hazards of proceeding to litigation on both the failure to prosecute issues and the merits," NTEU agrees to withdraw its claims regarding the merits. In exchange, the Agency agreed to grant an employment benefit to the grievant(s).

Further, in order to bring final resolution to this matter, the "Agency conditioned" a "settlement agreement" on NTEU, as the Grievants' representative, agreeing not to pursue all issues or factual circumstances raised in the grievance in any forum. At the time the illegal "settlement agreement(s)" were signed by the Defendants-Appellees, after the Plaintiffs-Appellants filed the EEOC Complaint. Each employee had individual rights to pursue Title VII employment discrimination claims when the agency and NTEU refused to go forward with arbitration. NTEU did not appoint an arbitrator, BUT suspended and closed the case.

On April 18, 2001, Administrative Judge, Mona F. Read U.S. Equal Employment Opportunity Commission ruled the class agent identified the discriminatory action of the Agency as being the Agency's "collusion" with the union in settling the mass grievance.. Appellants should have been granted relief pursuant to 29 C.F.R. 1614.501 et. seq by operation of Summary Judgment pursuant to 29 C.F.R. 1614.109(g) issued by U.S. Equal Employment Opportunity Commission final decision. Defendants-Appellees were able to navigate through the U.S. District Court proceeding by misrepresentation and altered evidence; omitting of evidence, facts and law. Defendants'-Appellees' altered the U.S. Equal Employment Opportunity Commission decision by omitting the final decision of April 18, 2001. The Agency and NTEU removed the April 18, 2001 letter that accompanied the decision of U.S. Equal Employment Opportunity Commission finding of discrimination when the filed their response and Motion for Dismissal(s) in District Court. The evidence presented was contrary to the factual evidence and facts of an administrative decision, and relevant to the findings and conclusion of the District Courts Order. The U.S. Equal Employment Opportunity Commission decision, rendered pursuant to 29 C.F.R. 1614.109~), 109(g, or 109(i); the final decision was pursuant to 29 C.F.R. 1614.109(g). The Defendants-Appellee(s) have taking the Appellants through an erroneous process, which took them ~further off course away from their rightful rights and remedy, inflicting severe distress, through intimidation, threats of garnishment of wages and wastes of financial resources that caused damage to their career and reputation.

NEMO EX DOLO SUO PROPRJO RELEVETUR, AUT AUXILIUM CAPIAT.

I. JURISDICTIONAL STATEMENT

Plaintiffs'-Appellants' complaint was filed in the United States District Court for the Southern District of Texas; de novo. Plaintiffs'-Appellants' are civilian federal employees with the Internal Revenue Service. The complaint was filed against Paul H. O'Neill, Secretary, Department of Treasury and Colleen Kelley, President National Treasury Employees Union (NTEU) and its officials for violations of Federal and Constitutional laws; Title VII of the Civil Rights Act of 1964, amended 1991, et seq. **42 U.S.C. ~2000e-2 (3) (k) (1) (A), et seq; 42 U.S.C. ~2000e-3 (b), et seq; 42 US. C. ~ 2000e-5(b)(g)(1); 42 U.S.C. 2000e et seq; 42 U.S.C. 2000e-16,** et seq. inter alia.

For reasons discussed in this brief, the District Court had jurisdiction over this action pursuant to a final decision by the Equal Employment Opportunity Commission pursuant to **29 C.F.R. ~ 1614.502(a), 29 C.F.R. ~ 1614.503, 28 U.S.C. ~ 1361** and Title VII of the Civil Rights Action of 1964, and amended in 1972 to apply to federal civilian employment complaints of discrimination. Title VII of the Civil Rights Act of 1964, and amended in 1991 to include compensatory damages for intentional discrimination and disparate treatment; and **42 U.S.C ~ 2000e -2(c) et seq; 42 U.S.C. ~2000e- 3 et seq; 42 U.S.C. ~2000e-5 et seq; 42 U.S.C. ~2000e-16, et. seq. 42 U.S.C.~ 2000e-16, (c)(d) et seq. and 28 U.S.C.~ 1361;** inter alia.

This appeal is from a final judgment entered on December 12, 2002. Plaintiffs'-Appellants' filed a timely notice of appeal on December 19, 2002.

The appeals court has jurisdiction over this appeal pursuant to **28 U.S.C. ~1361 et seq; 28 U.S.C. °1291; 28 U.S.C. °1331 and 28 U.S.C. °1391(c);** inter alia.

The plaintiffs'-appellants' have suffered injury-in-fact and show that the interest they seek to protect is arguably within the zone of interest to be protected and regulated by the statutory guarantee in question. They have standing and request a trial de novo.

II. ISSUES FOR REVIEW

The claims for relief are complex. The complexity increased by the incompetence of Plaintiffs' removed representative. Because of the complexity of issues and law, Plaintiffs'-Appellants' request a de novo review and trial.

A. District Court:

1. Whether the District Court erred in allowing the amended "original Complaint" without leave of the court and following the scheduling order.

2. Whether the responsive pleading(s) and motion for dismissal(s) that preceded the "amended complaint" of "Employment discrimination and Breach of Contract Complaint" changed the direction of the "Original Complaint" and court.

3. Whether competent legal representation would have precluded the Memorandum and Recommendation for Dismissal(s) of Colleen Kelley, NTEU and, Paul H. O'Neill, Secretary of Department of Treasury.

4. Whether competent legal representation would have precluded the Motion(s) for Sanctions, Attorney fees and Dismissal(s).

5. Whether the District Court erred when it held that it did not have jurisdiction for the Title VII complaint against NTEU National President Colleen Kelley.

6. Whether the complexity and lack of jurisdiction the results of, incompetence of counsel, and misrepresentation, altered and omitted evidence and demands de novo review and relief from the District Court Order and Judgment under Rule 60(1,), (1), (2), (3) and (6), et seq., and FRAP 10 (a)(2), FRAP 16(1,); inter alia.

7. Whether plaintiffs'-appellants are entitled to execute summary judgment pursuant to **29 C.F.R. 1614.109(g), 29 C.F.R. 1614.501(c), 29 C.F.R. 1614.502 and 503(g) pursuant to 28 U.S.C. 1361** and all other applicable relief, inter alia.

B. Title VII Employment Discrimination - Internal Grievance

1. Whether NTEU collective bargaining agreement promoting victims the right To file Title VII discrimination complaint(s) under the internal grievance process leading to arbitration a deterrent to strip constitutional and legal rights that adversely affects the legal right of the victim to prosecute Title VII discrimination a matter of public policy and public interest.

2. Whether NTEU and the Agency had the legal right to invoke a binding Settlement agreement with prejudice knowing plaintiffs'-appellants' preceded in filing an EEOC complaint of discrimination occurring in the internal grievance process and Title VII issues raised for prosecution under the internal grievance process is a matter of public policy and public interest.

3. Whether plaintiffs'-appellants' had protected rights to proceed with prosecution; of their Title VII discrimination complaint, under the EEOC process, without interference from the Agency and NTEU.

C. The U.S. Equal Employment Opportunity Commission

1. Whether the U.S. Equal Employment Opportunity Commissioner erred in not monitoring relief for the complainants under **29 C.F.R. 1614.501(c)** from a decision of discrimination issued pursuant to **29 C.F.R. 1614.109(b), 109(g) or 109 (i).**

2. Whether the U.S. Equal Employment Opportunity Commissioner erred in not monitoring defendants' - appellees' compliance of a final decision issued pursuant to **29 C.F.R. ~1614.109(g)**.

3. Whether the U.S. Equal Employment Opportunity Commissioner erred in not monitoring compliance and enforcement of the final decision pursuant to **29 C.F.R. 1614.503(g)**, Title VII for judicial review of the agency's refusal to implement relief pursuant to the Administrative Procedure Act **5 U.S.C. 701et seq; 28 U.S.C. 1361**, or to commence de novo proceedings pursuant to the appropriate statutes.

III. STATEMENT OF CASE

A. Issues of Underline Grievance

Beverly Dickerson, Alita Carter, Lydia Sowumni-Cruse, Alexis Powell are African-American female employees, working in the Bankruptcy unit, classified as Bankruptcy Technicians GS-592-5/6/7 pay grade 7. Linda Micheaux-Reed and Vera Robinson are African-American. Rita Galvan, is a Hispanic-American, all females classified as Bankruptcy Specialist GS-1101-7/9, pay grade 9, with over 18 years of civil service with the United States Treasury Department, Internal Revenue Service.

June 7, 1998, and amended August 27, 1998, fourteen (14) minority female employees initiated an internal grievance alleging Title VII employment discrimination violations against the Internal Revenue Service, pursuant to Article 41 of the labor management

collective bargaining grievance process. The aggrieved were clerical and lower level professional employees' of the bankruptcy unit. The total make-up of the lower level employees are twelve African-American females, one (1) Caucasian-American, handicap female, and one (1) Hispanic-American female. The employees were seeking equal opportunity for non-competitive promotions to positions that were upgraded in 1992 and again in 1995, for promoting the bankruptcy clerical and lower level professional employees.[1]

The National Office of Internal Revenue Service upgraded the bankruptcy positions from the dead end bankruptcy clerical GS-592-7 position to a noncompetitive professional level of GS-1101-7/9, with upward mobility to a competitive GS-1101-11/12 bankruptcy specialist, career ladder position.

The agency maliciously conspired to deny promotional opportunities and upward mobility for minority employees, creating a hostile working environment between the minority employees and the non-minority employees', who were the professional wage-earning employees "grade 12". Management adversity to authority, policy and regulations implemented a "local position description" that was not certified or classified for position duties, grade or pay structure or approved by the National Office of the Internal Revenue Service. The Agency's stance purposed on denying the Bankruptcy Unit of minority female employees, the right to progress to their full employment potential equal to their skills, ability with equal pay and training as well as promotional opportunities. [2]

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[1] References to "R.A._____"are to pages in the Record on Appeal.

After coming to an impasse at the third and final step of the internal grievance process, the aggrieved requested invocation of arbitration on the Title VII employment violations in denying promotional opportunities for equal pay.

November 24, 1998 the aggrieved employees received notification from NTEU National Office that the grievance was under the jurisdiction of invocation in binding arbitration. The aggrieved waited over a year and a half for an arbitration hearing to prosecute Title VII violations during the extended time the Agency and NTEU would elude employees inquiries with "waiting for the arbitrator" or "soon". Beverly Dickerson and Vera Robinson made numerous personal telephone and correspondence to Colleen Kelley, President and Michael Grabske, field representative of NTEU, neither responded. The aggrieved tried notifying NTEU of management subjecting employees to hostile working environment of harassment, denial of promotions, reprimands and other violations in retaliation for filing the grievance contemporaneous with the wait for arbitration.

Vera Robinson, Alita Carter, Alex Powell and Rita Galvan notified management, and local NTEU office; they would file and pursue their Title VII grievance under the EEOC process;

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[2] The employees were minorities, holding clerical level or lower level professional Bankruptcy positions; management maliciously replaced a National Position description; adverse to policy, practice and procedures, and Title VII of the Civil Rights act; the Houston district minorities, were being denied promotional opportunities, equal pay and benefits; other district upgraded to allow promotional opportunities, and equal pay for equal work

employment conditions were worse. The case was inactive and NTEU was not forth coming on a hearing date for arbitration or a name of an appointed arbitrator according to the terms and procedures of Article 41 and 43 of the collective bargaining agreement. [3] Mr. Martin Arnold "heatedly" informed four of the aggrieved there would be no arbitration. Within a month, management notified the aggrieved that there was going to be a "mandatory meeting" concerning the grievance.

March 1, 2000 the Agency and NTEU abused its authority and called a "mandatory meeting" on a grievance that should have been under the jurisdiction of an arbitrator. The aggrieved questioned management and the union about having a "mandatory meeting" on issues pending adjudication under the jurisdiction of an arbitrator. Manager, Mr. Martin Arnold, and Mr. Eddie Wariner, NTEU made threats, including threats of demotions and denial of promotions, whenever the aggrieved employees questioned the purpose of the "mandatory meeting" as well as their desire to go to arbitration to adjudicate the Title VII issues of employment discrimination.

Management hurled personal threats and requested a vote as to whether or not we would accept the promotions and would be able to arbitrate the Title VII issues. Personal threats were made to Alita Carter and Beverly Dickerson [4]; "if you don't apply for one (1) of the GS-9 positions you will be demoted" back to the GS-592-7 position.

As it came to pass, both did receive a demotion from GS-9 to GS-7 and back to the GS-9 position to this date." [5] Management and NTEU denied Beverly Dickerson, Alita Carter, Lydia Sowumni-Cruse, Rita Galvan, Alexis Powell, Linda Micheaux-Reed and Vera Robinson; as well as the "other seven (7) aggrieved", their constitutional and statutory rights to prosecute Title VII violations under binding arbitration.

According to policy and procedures, management and NTEU no longer had the authority to negotiate terms or conditions with the employees after the 3rd step of the grievance process and pending arbitration.

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[3] Article 43 of the collective bargaining agreement governing binding arbitration states that if a hearing date for arbitration is not scheduled between the Agency, NTEU attorneys', with the arbitrator, within six months of invoked arbitration the case is, closed by the arbitrator.

[5] The Bankruptcy Specialist positions are GS-1 101-7/9, the aggrieved qualified and were already GS-592-7; they were performing the duties being denied upgrade to the GS-1 101-7/9 because the grade 9 leads to grade 12 higher pay and professional level leading to management of that classification; the clerical GS-592-7 was the final grade and pay classification, dead end position for the bankruptcy unit.

B. The Equal Employment Opportunity Commission

On April 14, 2000, the Plaintiffs-Appellants initiated the "required" "informal EEOC complaint" to prosecute .the Title VII employment violations raised under the grievance process for arbitration, and the unlawful vicious discrimination committed in reprisal for filing the Title VII complaint through the grievance process. The complaint encompassed the fraudulent acts purposed on denying adjudication of employment discrimination under the jurisdiction of arbitration.

Approximately five (5) days after filing the informal EEOC complaint, management called a "non-mandatory meeting" on April 19, 2000; Complainants "did not attend" the meeting, and later learned it was called a "settlement meeting".

Following the "mandatory meeting" of March 1, 2000; Beverly Dickerson, Alita Carter, Rita Galvan, Alexis Powell, Lydia Sowumi-Cruze, Vera Robinson, Linda Micheaux-Reed filed an EEOC complaint; for prosecution of; the Title VII employment discrimination complaint that was filed under the internal grievance process; the claims included obstruction of justice by intentionally and illegally interfering with prosecution of unlawful discrimination.

In the course of the EEOC investigation, James C. Parker, EEOC canceled his interviews with the Agency and NTEU. The agency notified the investigator, there was a "settlement agreement", and the Agency and NTEU had closed the grievance "**December 27, 1999**".

The Agency with malice closed the grievance" one (1) year and one (1) month "after" the case was "purported" invoked in binding arbitration" **"without arbitration" and four (4) months "prior"** to the alleged **"settlement agreement"**. Further, the agency initiated the settlement meeting and agreement five (5) days after the complainants' Initiated their EEOC complaint.

Beverly Dickerson was shown a copy of a "settlement agreement" dated April 19,2000, signed by Michael Salyards, Attorney General Legal Services and Paul Cordova, Director Houston District. An employee stated a copy of the "settlement agreement" was "faxed" to the Union office from the Agency following the "settlement meeting of "April 19, 2000," after she made a personal request to NTEU.

Plaintiffs'- Appellants' later that day approached Ms. Susan Wallace of Labor Relations to find out what was going on Ms. Wallace handed complainants' a copy of another "Settlement Agreement" dated May 8, 9, and 15th, 2000 signed by Mr. Michael Grabske, NTEU field representative, Mr. Michael Salyards, Attorney for General Legal Services and Paul Cordova, Director, of the Houston District.

September 22, 2000, Beverly Dickerson, Alita Carter, Rita Galvan, Alexis Powell, Lydia Sownmi-Cruze, Vera Robinson, Linda Micheaux-Reed received the right to file individual "formal" complaints with U.S. Equal Employment Opportunity Commission. Complainants' filed pursuant to 29 C.F.R. ~1614.106 and 108 against Paul H. O'Neill, Secretary of the Treasury, and NTEU.

Plaintiffs'-Appellants' demonstrated the particular Title VII employment discrimination alleged under the internal grievance

process for arbitration; as well as, the institutionalized discriminatory post harassment, hostile working environment and retaliation suffered, waiting for arbitration; as well as the particular institutionalized discriminatory employment practice of denying minority employees the right to progress to their full working potential. As well as equal pay; equal to their skills and ability. The EEOC complaint also including intentional discrimination and disparate treatment for the purpose of; denying access to prosecute discrimination and discriminatory acts and demotions of Beverly Dickerson, Linda Micheaux-Reed, Alita Carter; lowering of Beverly Dickerson performance appraisal. Official reprimands of Vera Robinson and Beverly Dickerson, in reprisal for initiating a Title VII discrimination complaint first under the internal grievance process and the EEOC process. The two(2) acting contacts; Beverly Dickerson and Alita Carter, are denied promotion in reprisal for the EEOC AND Civil Suit. The complainants became targets of on-going invidious discrimination contemporaneous with the filing of the EEOC complaint.

NTEU and the Agency purposed the language of the "settlement agreement" with malice for the purpose of: stripping away legal and constitutional rights. NTEU and the Agency "fraudulently", with malice, asserted that the settlement agreement was "negotiated" under the "jurisdiction of arbitration" and the issues and facts were "adjudicated". The actions of the Defendants'-Appellees are a matter of public policy and interest.

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6 The Agency and NTEU did not appoint an arbitrator pursuant to policies, practices, and procedures. Title VII grievance never came under the jurisdiction of an Arbitrator, the grievance was never referred for arbitration by NTEU attorneys' or the Agency's attorney according to policy, practice and procedures.

The purported settlement agreement dismissed with prejudice the Title VII issues and facts raised in the grievance for prosecution though arbitration [6] and binding litigation filed before the execution of the **"settlement agreement" [7] in any forum**, including **EEOC. [8]**

The "settlement agreement" purposed a collateral attack on the Title VII issues denying prosecution and relief pursuant to Title VII of the Civil Rights Act.

The Agency raised the defense of a collateral attack in their response to the EEOC complaint, claiming Title VII issues adjudicated; although, the issues were denied adjudication through arbitration.

The U.S. Equal Employment Opportunity Commission administrative judge found the first issues of the complaint to be a "collateral attack" of issue "adjudicated" under the Union and Management Contract. The U.S. Equal Employment Opportunity Commission wrote, "Employees cannot use the EEOC complaint process to lodge a collateral attack on another proceeding" and the 'proper form for a complainant to raise the challenges to actions which occurred during the arbitration proceeding was at that proceeding.

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[7] The Agency and NTEU wrote the "Settlement Agreement" after complainants' initiated the EEOC. The EEOC process was initiated April 14, 2000; the 1st "Settlement Agreement was executed April 19, .2000, and 2nd "settlement agreement" was executed May 8, 9, and 15, 2000.

[8] During investigation, "the EEOC investigator advised the complainants' that they could "also" file a complaint with FLRA for the conduct of NTEU as the union representative.

The U.S. Equal Employment Opportunity Commission, Administrative Judge found pursuant 29 C.F.R. °1614.204(c)(l); the "class had identified the discriminatory action of the agency as being the agency's collusion with the union in settling the mass grievance". Further, "the claims are typical and common with that of the other purported members of the class." [9] The EEOC administrative judge's decision was issued pursuant to **C.F.R. ~1614.109(b)), 109(g) or 109(i)** with the right of the Agency to Appeal the findings of "discrimination" **pursuant to 29 C.F.R. °1614.403.**

The Agency did not appeal the decision of the administrative judge. However, with malice issued a final decision pursuant to 29 C.F.R. ~ I07 and the right to file civil suit.

The Agency denied Plaintiffs'-Appellants' rights to relief for Title VII unlawful discrimination pursuant to 29 C.F.R. ~1614.501 et. seq.

The agency had 40 days to issue a final decision on discrimination or the Administrative Judge's decision would be the final decision pursuant to **29 C. .R. °1614.109(g).**

The agency, with malice, dismissed the EEOC complaint pursuant to **29 C.F.R. 1614.107** "stating" failure to state a claim issuing a right to appeal or file civil action.

"Later", the complainants' discovered, Jerry Armstrong, Department of the Treasury, Regional Complaint Center reviewed the complaint and "independently" "determined" it to be a class complaint. Mr. Armstrong, forward the complaint to Marian Harvey, Office of Equal Opportunity Commission, Treasury; the Director, Marcia H. Coates, Office of Equal Opportunity Program, Department of the Treasury "independently" determined to "forward" the seven (7) individual complaint(s) to the U.S. Equal Employment Opportunity Commission to make a determination on the certification of a class complaint of discrimination.

C. District Court

The Beverly Dickerson, Alita Carter, Lydia Sowumni-Cruze, Rita Galvan, Alexis Powell, Linda Micheaux-Reed and Vera Robinson, through their "former" attorney filed a complaint of discrimination, trial by jury. The complaint changed to Employment Discrimination and Breach of Contract. The compliant was dismissed as a result of, improper responses and filings, failure to comply with applicable rules, filing of incorrect statutes, failure to refer jurisdiction. Plaintiffs? counsel failed to respond to responsive pleadings and to address obvious altered and misrepresentation of material evidence and facts.

IV. STATEMENT OF FACTS

A. District Court

The District Court abused its discretion by admitting testimony and documents the proponent failed to identify and produce while under the legal obligation to do so.

The proper standard for judging attorney performance is that of reasonably effective assistance, considering all the circumstances.

The Federal Rules of Civil procedures, Rule 4(m) requires defendant(s) to be served within 120 days after the filing of the complaint. The Docket reflects that defendant Colleen Kelley CIO Eddie Wariner, NTEU, received the summons October 9, 2001. The District Court requested an answer by December 08, 2001, [R.A.-Summons of Kelley, Ex. 11].

On October 30, 2001, defendant Colleen Kelley filed an unopposed Motion for Postponement of the initial conference scheduled for November 2, 2001 to a date after December 10, 2001. Judge Sim Lake signed an Order on October 31, 2001 for the docket order and scheduling conference for December 7, 2001 at 3:00p.m., informing defendant Kelley to file a certificate of interested parties and responsive pleadings by December 5, 2001, [R.A.-Unopposed Motion of Kelley, Ex.47-48].

December 5, 2001, defendant, Colleen Kelley, filed a Motion to dismiss Plaintiffs' Complaint. There is no order on record granting or denying Defendant's Kelley's Motion to Dismiss, [R.A.-Kelley, Motion to Dismiss, Ex. 70-71].

The record reflect that defendant Colleen Kelley's Motion to Dismiss was filed December 5, 2001, but never ruled upon nor was a responsive pleading filed within the required 10 days.

Defendant Paul H. O'Neill do Mervyn Mosbacker received the summons October 9, 2001. The District Court requested a filed answer due by December 08, 2001, [RA.-Summons, O'Neill, Ex. 13].

There is no order in the record signed by Judge Sim Lake extending the time to file the answer or order or postponing disposition of the motion. The docket reflects that defendant Paul H. O'Neill filed an answer to the plaintiffs "Original Pleading" on December 11, 2001, [R.A.-O'Neill answer to complaint, Ex. 159-162].

Defendant Colleen Kelley filed a motion to dismiss 67 days after the filing of the original complaint, [R.A.-Kelley, Motion to Dismiss, Ex. 69-71]

The District Court allowed the "Original Complaint" to be "changed" 114 days after the scheduling order for Pre-Trial Procedures, approximately 4 months after the defendants' response and motion(s) to dismiss the "Original Complaint", [R.A.-Amended Complaint, Ex. 163-169].

The Original Complaint was changed to "Employment Discrimination and Breach of Contract Complaint" without leave of the court or "written consent" and after responsive pleading(s) and motion(s) to dismiss from the defendants'.

The "Original Complaint" of "Employment Discrimination and Breach of Contract Complaint" encompassed the defendants' defense and responsive pleadings changing the legal and factual issues raised in the "Original Complaint", [R.A.-Original Complaint, Ex. 1-5].

The court terminated and stayed all discoveries, granting a Motion for Protective Order and Denied the Motion for extension of Dispositive Motions, a reflection of plaintiffs' attorney incompetence. [R.A.-Telephonic Status Conference transcript, Ex. Vol.6, page 9-13].

The removal of Plaintiffs' attorney prompted the Plaintiffs' -Appellants to file evidence of material facts to support their "Original Complaint" in defense of defendants' altered and misrepresentation of material facts and evidence given through responsive pleading(s) and motion(s) for dismissal. The Memorandum and Recommendation for summary judgment displays the incompetence of plaintiffs' attorney, [R.A.-Plaintiffs' motions and exhibits, 1289-1358, 1421-1441, 1289-1313, and Order denying defendants' motion for dismissal Ex. 1314-1316.]

B. Grievance.

Defendant Colleen Kelley is President of the National Treasury Employees Union (NTEU), a labor organization authorized by the Department of Treasury and certified as a representative of civil service employees. NTEU engages in employee participation activities; including dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours,

or other terms or conditions of employment, with an aggregate membership of twenty-five or more, is subject to the Title VII Civil Rights Act of 1964, amended 1991,**29 U.S.C.º 2000e (e)(1) et seq.**

The aggrieved were mislead to believe the grievance was under the jurisdiction of an arbitrator for binding arbitration, who had the authority of, scheduling hearing dates, and extensions. As well as grieveability and arbitrability issues, before addressing the merits of the grievance, [R.A.-Grievance, Ex. 1417-1419], [R.A.-Request for Binding Arbitration, Ex. 997-1001] and [R.A.-Letter of Invocation of Arbitration, Ex. 758].

The authority to address grieveability and arbitrability, negotiate conditions and terms of a settlement comes under the jurisdiction of the arbitrator. The "arbitrator" has the "authority" and responsibility of conducting settlement negotiations, [R.A.-1 st Settlement Agreement, Ex. 1416-1417], [R.A.-2nd Settlement Agreement, Ex. 1418-1419].

The NTEU and the **Agency did not appoint an arbitrator, instead,** conducted **negotiations** on **conditions** and **terms** of the grievance after the case was closed, calling a **"mandatory meeting"** and 'settlement meeting" **outside** the **jurisdiction** of an **arbitrator and arbitration.** The aggrieved were misleading over a year to believe the grievance was under the jurisdiction of an arbitrator, [R.A. -Declaration of Michael Salyards, Ex. 1340-1342].

Attorney Michael Salyard's declaration is evidence that the settlement agreement and execution thereof, did not originate from binding arbitration on issues or merits raised in arbitration as "stated" through out the language of the "settlement agreement".

Article 43 of the Collective Bargaining Agreement, "if the employer declares a grievance non-arbitrable or nongrievable the original grievance shall be considered amended to include the issue of non-grievability. Such declaration may be made at any time." The arbitrator has the authority of making all arbitrability and/or grievability determinations, [R.A.-Collective Bargaining Agreement on Arbitration, Ex. 399-404].

The agency and NTEU purposed a collateral attack by fraud and deceit for the purpose of denying prosecution of Title VII unlawful employment discrimination through arbitration and the EEOC process. NTEU and the Agency denied complainants their legal rights as a matter of law, to prosecute and relief of Title VII employment discrimination claims alleged under the internal grievance process. [R.A.-Settlement Agreements, Ex. 1194 and 1195], and [R.A.-Agency response to EEOC complaint, Ex. 1348-1354].

The Agency and NTEU illegally interfered with the statutory rights of the complainants to participate and adjudicate Title VII employment discrimination claims, with intent. The agency and NTEU were aware that the complainants had the right to, and authority to, file a complaint through the EEOC; and to prosecute the issues raised pursuant to **Title 5 U.S.C. ~ 71212(d) and 29 C.F.R.~ 1614 401** after, the agency and NTEU suspended and refused arbitration to prosecute Title VII employment discrimination.

The Defendants'-Appellees' are intentionally depriving the prosecution of Title VII employment discrimination as well as unlawful discrimination violation claims. Intentionally depriving governmental law enforcement activities of important testimony and evidence needed to determine whether a violation of employment discrimination occurred, ultimately fostering a hostile working environment of harassment, retaliation, reprisal, and other Title VII violations thus creating an atmosphere of future violations of the law, [R.A. -Affidavits of Complainants, Ex. 801-884], [R.A. -Ex. 1194, 1195 and 1340-1342].

Defendants' -Appellees' intentional discrimination in denying Plaintiffs'-Appellants' a forum to litigate the underline Title VII employment discrimination and relief; although, the finding of discrimination by the U.S. Equal Employment Opportunity Commission. Defendants-Appellees are violating the constitutional and legal rights of the victims of discrimination; and placing the protected fights of Beverly Dickerson, Alita Carter, Lydia Sowunmi-Cruze, Rita Galvan, Alexis Powell, Linda Micheaux-Reed and Vera Robinson in jeopardy for future injury.

Interference with Title VII protected rights are contrary to public policy, and the anti-retaliation provisions of the civil rights statutes prohibit such conduct.

C. The Equal Employment Opportunity Commission

The Plaintiffs'-Appellants' filed a complaint against the Agency and NTEU for their participation in denying prosecution of Title VII employment discrimination claims through arbitration. The Agency and NTEU subjected employees to harassment, demotions, denials of promotions, threats, a working environment of hostility in reprisal for pursuit of justice and relief; inter alia.

The Order dismissing Plaintiffs' complaint for lack of jurisdiction was in err. The complainants exhausted their administrative remedies. The defendants' were not aware that a summary judgment was issued by the U.S. Equal Employment Opportunity Commission pursuant to **29 C.F.R.~ 1614.109(g),** [{New Evidence} - Letter dated April 18, 2001, U.S. Equal Employment Opportunity Commission, Mona F. Read, Lead Administrative Judge, exhibit to Appellants' response to appellee's Colleen Kelley's Motion for Summary Affirmance].

The issue of a collateral attack of the underline issues of employment discrimination is mootable. The purpose of the settlement agreement is obvious, The Plaintiffs'-Appellants' had the right to file a complaint under the EEOC once the agency had closed the case or once the Agency and NTEU admitted there would be no arbitration. The actions of the Agency and NTEU handling the internal grievance process met all the conditions for complainants to pursue prosecution of employment discrimination pursuant to **5 U.S.C.~ 7121.2(d), 29 C.F.R.~ 1614401(d) and 29 C.F.R.°1614106.** The Agency and NTEU used the only alternative left to stop the rights of the victims to prosecute discrimination violations. The defendants'-appellees' invoked an illegal "settlement agreement" for the purpose of a collateral attack on all future administrative and judicial forums. [R.A.-Agency's response to EEOC, Ex. 1348-1354] and [R.A.-Settlement Agreement, Ex. 1194 and 1195].

The seven (7) complainants initially filed a class compliant under the initial EEOC pre-complaint processing. However, following counseling and the investigation process the complainant(s) were given the right to file individual complaints

pursuant to **29 U.S.C. ~1614.196** "or" class complaints' pursuant to **29 U.S. C.°1614.204**. The complainant(s) chose to file individual complaint(s) of discrimination at the 'formal" stage of the EEOC process. [RA-Complainants' individual complaints, Ex. 1315-1415].

The agency independently chose "adverse to policy and procedures" to forward the complaint(s) for class certification, although the complainants chose to file individual complaints of discrimination. [R.A.-Agency's request for class certification, Ex. 1356-1358].

The U.S. Equal Employment Opportunity Commission findings of discrimination pursuant to **29 C.F.R. ~1614.204(c)(1)** resolved the claims of intentional discrimination and disparate treatment against the Defendants'-Appellees'. [R.A.-EEOC findings Ex. 647-658].

Pursuant to **Title VII of the Civil Rights Acts of 1964 ~ 2000e-2 (1) (A)**, the plaintiffs'-appellants' demonstrated and resolved the issue of unlawful Title VII discrimination within the scope of litigation and judgment as well as final decision under the constitution and federal civil rights laws.

The Agency and NTEU covered up and denied Plaintiffs'-Appellants' relief from the U.S. Equal Employment Opportunity Commission, Administrative Judge's final decision pursuant to **C.F.R. ~ 1614.109(g)**. [U.S.. Equal Employment Opportunity Commission, Administrative Judge letter dated April 18, 2001, submitted by Appellants' in response to Colleen Kelley, Motion for Summary Affirmance].

The complaints included Title VII violations committed by NTEU and the Agency for the purpose of; denying prosecution of Title VII issues. The "Agency" forwarded the complaint(s) requesting class certification, (emphasis on Agency).

The agency waived their right to appeal through malfeasance and noncompliance of the U.S. Equal Employment Opportunity Commission findings and decision pursuant to **29 C.F.R. ~ 1614.109(g)**. The Agency dismissed and misled the complainants', further denying appellants' relief pursuant to **29 C.F.R. ~1614.110** and **501**, pursuant to Title VII of the Civil Rights Act of 1964, amended 1991, [R.A.-Agency decision, Ex. 1348-1354].

The Agency addressed the U.S. Equal Employment Opportunity Commission decision with contempt dismissing the complainants' complaint pursuant to **29 C.F.R. ~1614.107** as full relief without addressing the findings of discrimination or relief pursuant to **29 C.F.R.~ 1614.501**; or appealing the findings of discrimination pursuant to **29 C.F.R.~ 1614.403**. The U.S. Equal Employment Opportunity Commission did not monitor the case for relief of discrimination pursuant to **29 C.F.R. ~ 1614.503(g).**

V. ARGUMENT

A. District Court

The Sixth Amendment right to counsel is the right to effective assistance of counsel. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the process that the trial cannot be relied on as having produced a just result. The proper standard for judging an attorney's performance is that of reasonably effective assistance, considering all the circumstances. With regard to the required showing of prejudice, the proper standard requires the showing that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different.

The Defendants' were in default and violation of Federal Rules of Civil Procedures 4(m), 12(4), (A) (B), when the court allowed the amended complaint without leave of the court. Federal Rules of Civil Procedures states, "if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or, if the court grants a motion for a more definite statement."

The responsive pleading shall be served within 10 days after the service of the more definite statement. Rule 12 (a) (1,) of Rules of Civil Procedures requires that a defendant shall serve his answer to the complaint within 20 days after the service; or 60 days when the United States or an officer or agency thereof shall serve an answer or motion for lack of jurisdiction.

Following the removal of plaintiffs' attorney, plaintiffs' were able to avoid Summary Judgment, although not in time to avoid the Memorandum and Recommendation for Dismissal and Judgment, dismissing their Title VII discrimination complaint.

Defendants-Appellees were able to navigate through the U.S. District Court proceeding by misrepresentation and, altered evidence, omitted evidence.

Defendants'-Appellees' altered the U.S. Equal Employment Opportunity Commission decision by omitting the final decision of April 18, 2001. The Agency and NTEU removed the April 18, 2001 letter that accompanied the decision of U.S. Equal Employment Opportunity Commission finding of discrimination when the filed their response and Motion for Dismissal(s) in District Court.

The evidence presented was contrary to the factual evidence and facts of an administrative decision, and relevant to the findings and conclusion of the District Courts Order. The U.S. Equal Employment Opportunity Commission decision, rendered pursuant to 29 C.F.R. 1614.109(b), 109(g) or 109(i); the final decision was pursuant to 29 C.F.R. 1614.109(g). "If the agency does not issue a final decision within 40 days, then my findings and conclusions, along with any relief, will become the final decision pursuant to **29 C.F.R. ~1614.109(g)".** [R.A. U.S. EEOC findings- Ex.. 647-658] and [R.E. Ex. 23, not included in records of appeal].

The Order as well as the Memorandum and Recommendation by the Magistrate Judge, was decided on uncontested, responsive pleadings.

The U.S. Equal Employment Opportunity Commission finding and final decision of discrimination was not addressed in Plaintiffs complaint or defendants' responsive pleadings, the U.S. Equal Employment Opportunity Commission finding the Agency to be in collusion with NTEU was not addressed in the complaint or responsive pleadings. The Agency's 40 days to file an appeal and/or provide relief pursuant to the plaintiffs' complaint of intentional discrimination and disparate treatment; the agency dismissal of the Title VII complaint adverse to the EEOC findings; the fact that the "Defendant" filed the EEOC complaints requesting class certification was adverse to regulations and law.

B. Grievance

An employer or labor organization may not interfere with the protected right of an employee to file a charge, testify, assist, or participate in any manner of investigation, hearing or proceeding under Title VII of the Civil Rights Act of 1964. Protected rights are non-waivable under the federal civil rights {Title VII}, **42 US. C. ~2000e et seq., and the Equal Pay Act, 29 U.S.C. ~ 206(d)**. The agency and NTEU intentionally violated those rights.

The Plaintiffs'-Appellants' had a non-waivable right to file charges with the EEOC. **See Gilmer V. Interstate/Johnson Lane Corp., 500 US. 20, 28 (1991); EEOC v. Cosmair, Inc., 821 F.2d at 1090; EEOC v. US. Steel Corp., 671 F. Supp. At 357-59.**

Id Mr. Michael Salyards. **EEOC v. Board of Governors, 957 F. 2d 424 (7th Cir);McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Wayne Goddard v. Nicholas F. Brady, Secretary of the Treasury, EEOC Request No.05910124 (1991), citing Furnco Construction Corp. V. Waters, 438 U.S. 567,576 (1978).**

Suddenly, management purposed a "mandatory meeting" forcefully with malfeasance, offering 14 positions and denying prosecution of the Title VII issues, ex post facto. The Plaintiffs'-Appellants' are being denied relief for the subsequent Title VII violations and contemporaneous Title VII violations. **Hochstadt v. Worcester Found. for Experimental Biology, 425 F. Supp. 318 (D. Mass), aff'd, 545 F.2d 222 (1st Cir. 1976); Veprinsky v. Fluor Daniel, Inc., 87 F. 3d 881, 889 (7th Cir. 1996); EEOC v. Pacific Pres Pub. Assn, 676 F. 2d 1272, 1281 (9th Cir. 1982); Garcia V. Lawn; 805 F.2d 1400, 1405 (9th Cir. 1986).**

Defendants'-Appellees' purposed a "settlement agreement" that stripped the rights of Plaintiffs'-Appellants'. A de novo review can challenge the legitimacy of the illegal "settlement agreement" that was invoked to deny the legal rights set forth under the constitution, **Rogers v. General Electric Co. 781 F. 2d 452 (5th Cir. 1986) citing United States v. Alleghany-Ludlum Industries, Inc. 51 7F.2d 826, 835 (5th Cir. 1975). Carey v. United States Postal Service, 812F.2d 621, 624-25 (10th Cir. 1987). Finch v. Postmaster General, 05880030,2046/G6 (1988);supporting law: Fielden v. Tennessee Valley Authority, 01 832 024,1081/E11 (1983). McLendon Wilson v. Clarence Thomas, Chairman Equal Employment Opportunity Commission, EEOC Appeal No. 01881684 (October 13, 1989); Rogers v. General Electric Co. 781 F. 2d 452 (5th Cir. 1986) citing United States v. Carey v. United States Postal Service, 812F.2d 621, 624-25 (10th Cir. 1987).**

Congress has explicitly decided that a conflict between the rights of identifiable victims of discrimination and the interests of the bargaining unit must be resolved in favor of the former. **NTEU v. FLRA 774 F 2nd1181 (1995). Title VII of the Civil Rights Act of 1964, 42 U.S.C. ~ 2000e et seq.**, provides that the right of an aggrieved employee to complete relief takes priority over the general interests of the bargaining unit. See **Franks v. Bowman Transp,. Co., 424 US. 747, 96 S.Ct 1251, 47L.Ed.2d 444 (1976). Reiterated in a decision in the 9th US. Circuit Court of Appeals - 436th Airlift Wing, Dover Air Force Base and FLRA, 01-1371, 103 LRP 2316.**

Federal courts have the authority to hear plaintiffs'-appellants' case of controversies rising from legal and constitutional rights that challenge the actions taken by a federal agency and diversity of jurisdiction. The U.S. Supreme Court has ruled, "that a Union's actions are arbitrary only if; in light of the factual and legal landscape at the time of the Unions actions, the Union's behavior is so far outside a wide range of reasonableness" as to be irrational. **Air Line Pilots Association, International v. O'Neill, 111 S. Ct. 1127(1991), quoting Ford Motor Co. v. Huffman, 345 US. 330 (1953).**

The Agency interfered with the rights to file individual complaints under the EEOC process pursuant to **29 CFR ° 1614.106**, when it forwarded the complaint(s) for class certification, anticipating the denial of certification. Agreements that prevent employees from cooperating with EEOC during enforcement proceedings and interfering with enforcement activities deprived the Commission of important testimony and evidence needed to determine whether a violation has occurred.

Furthermore, insofar as such agreements make it more difficult for the Commission to prosecute past violations. An atmosphere was created fostering future violations of the law. See **Brooklyn Savings Bank V. O'Neil, 324 U.S. 697, 710 (1945); EEOC v. Astra USA, Inc., 94 F. 3d, 738, 742 (1st Cir. 1996).**

The intangible injuries encompass intimidation, anxiety, severe stress, mental anguish, emotional pain & suffering as well as loss of enjoyment of life. See **Burlington Industries, Inc. V. Ellerth, No.97-569, US. Supreme Court (6/26/98).**

NTEU, can be held liable for the illegal conduct of its representatives if the conduct creates a hostile work environment, even though the conduct does not result in a tangible employment action.

C. Equal Employment Opportunity Commission

The U.S. Equal Employment Opportunity Commission found that the Agency conspired with NTEU to discriminate against the employees. Pursuant to a final decision **29 CFR~ 1614.109(g)**, Plaintiffs'-Appellants' are entitled to relief by operation of Summary Judgment, **29 CFR ~ 1614. 501 (a); 29~CFR ~1613, App~A 29 C. F.R. ~1614.502 and 503, 28 U.S. C. ~ 1361** relief must be provided.

Turning to the "settlement agreement" and the underline issues in controversy "clearly if victims of employment discrimination are unable to approach the EEOC through the internal grievance or the EEOC process, the investigative powers that Congress conferred would be sharply curtailed and the efficacy of investigations would be severely hampered. Congress reaffirmed the public policy against interference with EEOC enforcement efforts, including the right to file a charge. Congress enacted provisions barring retaliation in each of the statutes enforced by the Commission in large part to ensure that employees remain free to report suspected violations to the government.

VI. ARGUMENT

CONCLUSION

Facially neutral employment rules, practices, policies or procedures which have significant adverse effects upon members of a statutorily protected group, or which otherwise caused members of a protected group to be "denied access" to equal employment opportunities are unlawful. **Connecticut v. Teal, 457 US. 568 (1982; international Brotherhood Ward Cove Packing Co. v. Antonio, 109 S. Ct 2115 (1989); Watson v. Forth Worth Bank and Trust, 108 S. Ct. 2777(1988).**

The preponderance of the evidence in this case proves that the agency and NTEU's explanation in settling the mass grievance is a "pretext" for discrimination." **Texas Department of Community Affairs v. Burdine, 450 US. 248, 256 (1981); Holley v. Department of Veterans Affairs, EEOC request no.05950842 (November 13, 1997); Pavelka v. Department of the Navy, EEOC request no.05950351 (December 14, 1995).**

The Plaintiffs'-Appellants' are entitled to prosecute their Title VII employment discrimination claims; and relief for unlawful discrimination as cited in brief.

In determining whether conduct is arbitrary, the U.S. Supreme Court has ruled that a Union's action are arbitrary only if in light of the factual and legal landscape at the time of the Union's actions the Union's behavior is so far outside a "wide range of reasonableness", as to be irrational.

The Civil Rights Act of 1991 authorized awards of compensatory damages against the federal government under Title VII involving discrimination, in Cases of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.00.

Congress added compensatory damages to federal EEOC statues in order to make the "Perpetrators" of employment discrimination liable for non-wage economic consequences of their acts, to the extent necessary to provide full relief.

Appellants, were denied promotional opportunities for a long period of time that continues. Some plaintiffs-appellants demoted, all were denied retroactive promotions and within grade increases. Lydia Sowumni-Cruze, Alita Carter and Beverly Dickerson denied promotional opportunities when applying for positions qualified for, (Beverly Dickerson, and Alita Carter) were **acting agents / spokespersons in filing the EEOC complaint.**

Awards of back pay in Title VII cases are governed by **5 CFR ~ 550.801 et. seq. See 29 CFR ~ 1614.501 (b)-(c). 5 CFR ~ 550-804(a)** provides: When an appropriate Authority has determined that Plaintiffs-Appellants were affected by an unjustified or unwarranted personnel action, the employees are entitled to back pay under **~ 5596 of Title 5, United States Code**. The employees are entitled to Incremental increases, retroactive promotions and differentials they would have received (if not for the prohibited discrimination) as well as any overtime. **Taylor V. Tennessee Valley Authority, 01832701, 1238M10 (1984).** Plaintiffs'-Appellants' are entitled to individual punitive damages in the amount of $2,000,000.00 with interest, reimbursement for attorney fees, compensation for economic and non-economic damages, and award Appellants' such other and further relief as this court deems appropriate. See **Baker II, 922 F.Supp at 1305-06b** Wrote: Punitive damages Appropriate in case of callous disregard for a Plaintiff's rights. **Smith v. Wade, 461 US. 30, 51, 103 £Ct 1625, 1637, 75 L.Ed.2d 632 (1983) cited in U.S. v. Balistrieri; 981 F.2d 916, 936 (7th Cir. 1992).**

EXHIBIT 2

9100 Fondren #132
Houston, TX 77074
June 24,2003

Employment Standards Administration
Office OF Labor-Management Standards
Assistant Secretary, Victoria A. Lipnic
200 Constitution Avenue, N.W. Room 52321
Washington, D.C. 20210

Subject: Request For Review - Complaint of Vera Robinson V. NTEU and NTEU Chapter 222 of Houston, Texas.

Ms. Lipnic:

I request a review of the above-mentioned decision for the following reasons:

On January 31, 2003, at 2:00 p.m., I was interviewed by Jolyn Underwood, an OLMS representative in Houston. The interview was "not" extensive, in fact, it last about 30 to 45 minutes. Since that time I have not had any more meetings with her, however, I would provide documents to her regarding our litigation involving NTEU. The documents were filed either in District Court or the Court of Appeals.

At the time the above-mentioned case was filed, we were still members of the Union and dues were still being deducted from our payroll. I submitted a copy of my leave and earnings statement to Jolyn Underwood, OLMS Representative, which will support this statement and should be apart of the record.

Also, the incidents alleged in this complaint all occurred during our tenure as union members and before this complaint was filed.

You stated that the Bill of Rights does not entitle a union member to personal use of employer equipment. I would like the record to reflect that at the request of the NTEU Field Representative, Beverly Dickerson and I used our employer equipment to provide the "reports" the Union needed to prove during arbitration that we were performing higher graded work. It had "never" been a problem in the past, to pull these same reports, however, because we had filed the grievance and it was pending arbitration, it became an issue with management officials. As a result, the Agency Attorney, informed the NTEU Filed Representative, that it was "his" "responsibility" to request the documents through "him" because the case was now pending arbitration.

I would also like the record to reflect that I was given permission, by NTEU Chapter 222 President, to use the Union fax machine any time I wanted to. In using the fax machine, I would always ensure that a union representative was in the union office at the time. I would also give a copy of the documents I faxed to the union office before I left their office. For over a year and one-half, I faxed letters to NTEU Field Representative, and National NTEU President, Colleen Kelley, inquiring as to when the date of arbitration would take place. However, we "never" received a response. Instead, once the NTEU Chapter 222 President was informed that we had filed a lawsuit against NTEU and the Agency in District Court, I became the subject of a TIGTA investigation regarding using the fax machine for personal use.

For which I was not "aware" of. I was also at that time informed by the NTEU Chapter 222 President, that he had talked to the NTEU Field Representative and was told to tell me that I could no longer use the NTEU Union's fax machine.

I later received a clearance letter from management officials that no action would be taken against me regarding using the fax machine. My Manager, CeCelia Huffmes, informed me at that time, that Management "did not" "initiate" the TIGTA investigation against me.

You stated that the Bill of Rights sections of the CSRA regulations protects the right of a union member to sue, it does not limit the right of the union to defend itself or take other action permitted in legal proceedings brought against it. I would like the record to reflect that the legal documents submitted to Jolyn Underwood, OLMS Representative, clearly reflect that the union have attempted in every way possible to prevent our case from due process per the law.

A Declaration from the Agency's Attorney, clearly stated that NTEU "recognizing the costs and hazards of proceeding to litigation on both the failure to prosecute issues and the merits, NTEU agreed to withdraw its claims regarding the merits in exchange for the Agency's agreement to grant an employment benefit to the grievants." The record clearly reflect that the illegal settlement agreement "collaborated" between the Agency and NTEU against us, "further agreed not to pursue all issues or factual circumstances raised in the grievance in "any forum."

The "law" says the following: "Suspending or limiting access to an internal grievance procedure constitutes an "adverse action." In the case of EEOC v. Board of Governors 957 F.2d 424 (7 Cir.), of State College & Universities/29, a university's collective bargaining agreement provided for a specific internal grievance procedure leading to arbitration.

The agreement further provided that this procedure could be terminated if the employee sought resolution in any other forum, such as the EEOC. The Seventh Circuit rule that termination of the grievance process constituted an adverse employment action in violation of the anti-retaliation clause.

I Would like the record to reflect that we relied upon NTEU to fairly adjudicate our complaint. But instead, closed the case and mislead us to believe that the case was in arbitration. The record clearly reflects that NTEU filed Summary Affirmance in the Appeals Court to keep the case from being heard. The Record clearly reflects that NTEU filed a Motion to Strike our Brief. The record clearly reflect that since this case has been filed in federal court and now pending a decision before the Appeal's Court, our fight have been against NTEU. The Agency did not oppose our Appeal; the Agency did not join in with NTEU's Motion to Strike our Brief. The Agency did not file sanctions against our Attorney nor $97,OOO.OO, worth of attorney fees against us. But instead, it was NTEU, who was supposed to represent us in good faith. It was NTEU for which we have paid union dues throughout the years that misrepresented us. We are the one that was not "protected" by the very organization that should have protected our rights. But instead, manipulated our rights and then attempted to force us to accept their illegal manipulation.

The record clearly reflect through NTEU's filing of sanctions, that our Attorney, Carabeth Luckey, was "threaten" off our case and the Judge removed her after she "exemplified" incompetence.

The record reflect that as a result, we were left as Pro Se with no prior legal experience, survived, Two Motions for Dismissal filed by NTEU, Summary Judgment, Summary Affirmance and Motion To Strike Brief.

At the time that I met with Jolyn Underwood, our case had been dismissed out of Federal District Court and we had filed an Appeal. The record had not at the time been sent to the Court of Appeals. Jolyn and I discussed our being given the opportunity to litigate our case before an administrative judge.

Again, I request a "thorough" review of this decision.

Sincerely Yours,
s/Vera Robinson

Cc: Pat Wynns via Gary Lester
Jolyn Underwood

(4)

Supreme Court, U.S.
FILED
OCT 27 2003
OFFICE OF THE CLERK

No. **02-1576**

IN THE

Supreme Court of the United States

VERA NIGRO

Petitioner(s)

V.

U. S. FEDERAL LABOR
RELATIONS AUTHORITY

On Petition For Writ Of Certiorari
To The U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

VERA NIGRO
Petitioner, Pro Se
c/o 43 Courage Lane
Stafford, Va 22554
(703) 221-0211

11 pp

QUESTIONS PRESENTED

1. Whether the presumptive non-reviewability of the Federal Labor Relations Authority (FLRA) in their decisions not to issue Unfair Labor Practices (ULP) should be revoked, and revised to make new law whereby, such decisions by FLRA (not to issue ULPs) would be recognized as decisions for proper review by the Courts of Appeals, especially when adverse actions are part of the case brought before the Authority ?

2. Whether the non-reviewability of FLRA decisions not to issue ULPs are unconstitutional (interfere with due process, etc.) and are a detriment to Federal Employees, their rights particularly of due process, (to include investigation methods [as witness interviews] and equal protection under the law.

3. Whether, unfair proceedings, errors, especially gross errors, and arbitrary conduct and acts , by the FLRA (deliberate, or not) are unconstitutional and wrongfully deny and interfere with Petitioner and federal employees receiving full rights and proper adjudication and remedies on their claims against government agencies and unions ?

4. Whether the non-reviewability of the Federal Labor Relations Authority (FLRA) in their decisions not to issue Unfair Labor Practices (ULP), is unconstitutional, when Courts of Appeals cannot review such determinations, and more so when, the Appeals Court fails to assert proper jurisdiction in cases which non-reviewability does not apply ?

5) Whether the FLRA misused its position and authority, by failing to act reasonably, failing to act in good faith, failing to apply reasonable standards and proper statutory interpretations and failing to ensure proper regulation and statutory compliance and/or did FLRA act in excess of its delegated powers contrary to the act and the Constitution, which wrongfully promoted abuse against Petitioner and other federal employees?

6) Whether the FLRA misinterpreted the statute at 7102 and 7116 and acted unreasonably and/or outside the bounds of reasonableness, committed gross errors and as such rendered unreasonable arbitrary, and capricious decisions in these cases in violation of applicable law and statute in which the Court of Appeals should have asserted jurisdiction for review over?

Related questions incorporated.

PARTIES TO THE PROCEEDING

All parties to the proceedings appear in the caption of the case on the cover and we also include the United States.

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(To include: change in law and Congressional Intent and intervening cases of other federal employees demonstrating the correctness and timeliness of this Petitioner's arguments for change in the federal work place)

CERTIFICATE OF GOOD FAITH (not numbered).. 5

TABLE OF AUTHORITIES

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Constitution, statutes and regulation:

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IN THE SUPREME COURT OF THE UNITED STATES

Vera Nigro, (Petitioner)

v

U.S. Federal Labor Relations Authority

PETITION FOR REHEARING CASE No. 02-1576

Comes now the above named Petitioner and respectfully Petitions the Court for a Rehearing on the Petition for Writ of Certiorari. this Petition is based upon the following grounds:

1. That there exists intervening circumstances of a substantial or controlling effect and other substantial grounds were not previously presented.

A. That the Court erred in failing to grant Certiorari in the face of direct Constitutional violations on the part of federal agencies and federal courts as outlined in the Writ Petition for this case. More and newly arguing here the direct public interest in having the Supreme Court directly correct due process for Petitioner and other employees involved and coming forward in these matter and to the involved agencies.

Petitioner learned on 10/24/03 her extention request to file for Rehearing was denied, by having a call placed to the Court. Due to such a short time frame and adverse circumstances which the Petitioner is under, this is the best product we can present under the circumstances. This is Petitioner's "just in case" file. Petitioner does disagree with the Court denying her extension of time to file for Rehearing.

This Petition for Rehearing is intended to advance the arguments in the original Petition for Writ of Certiorari for the Petitioner in Case No. 02-1576. Further, we discuss briefly below a bit more where we believe there exists intervening circumstances of a substantial or controlling effect and other substantial grounds were not previously presented they are described below:

Petitioner believes that the Court should look at case 03-6904, Beverly Dickerson, et al. This case was just recently filed with the Court and the Court has current jurisdiction over that case. This case is one of the outlined cases Petitioner talked of in her Writ Petition and General Opposition. It demonstrates full support and corroboration to the Court the main points concerning lack of due process and unfavorable problems with the current administrative systems within the federal government. It demonstrates the verified truth of the Petitioners words in her Petition to the Court of the bad experiences faced and the rights interfered with and wrongfully denied. Petitioner believes now that this case is before the Court and it supports and corroborates the Petitioner in her original Writ Petition and General Opposition, the Court has jurisdiction to work the matters and Rehearing should be granted.

Further in support of and corroboration to the the Petitioner is the fact that past week history has been made to change the federal government processes. The meetings concerning the new Homeland Security Department took place, these meetings to establish changes had not yet occurred at the filing of Petitioner's Writ Petition. It has been realized that the current Civil Service Systems and Processes do not work and must change. Petitioner presented these facts to the Court in her Original Petition (See Petitioner's Writ Petition Page 26). The federal government systems which not only the Petitioner has come to this Court to raise concerns about involving these failing federal systems, for herself and others, but now others have come to this Court (Beverly Dickerson, Vera Robinson, et al 03-6904 and soon more) speaking of the same thing. The Petitioner believes her Petition is timely and the changes she talks of are timely as demonstrated by the additional cases coming into this Court. These cases and meetings show the validity of the issues and problems raised by the Petitioner to the Court. The matters raised by the petitioner in her Writ Petition to the Court are in the public interest for this Court to address and remedy for the Petitioner and those involved in Petitioner's cases and the parties that are coming forward and will come forward. Petitioner believes this Court must be at the forefront in protecting the employees and fostering the needed changes in the federal government.

Articles talking of changes that will occur to the government systems were printed in various news paper and support us further. 'The Washington Post" was one in which I'm sure many of the Justices read. The Post wrote articles in their Metro section stating 10/20/03 -White House, Meetings to Signal Changes in Homeland Security Work place and 10/21/03 - The Conversation begins on Homeland Security Personnel Rules.

Quoting from the 10/21/03 article Robert Bonner commissioner of the Bureau of Customs and Border Protection stated about the meetings and topics "I don't see the status quo as an option". The article was talking about and printing his comment about the revamping of pay and workforce rules in the Department of Homeland Security. Other meetings and articles have occurred stating that the changes resulting from Homeland Security will ushering changes to other problem areas and agencies in the federal government. The results of the Homeland Security meetings this week demonstrate the federal work place (including as it relates to unions) is changing because of concerns expressed over outdated and cumbersome processes and now realized and ripe for necessary action. The status quo(and problems of the current systems) which the Petitioner talked of in her Writ Petition and now the Dickerson groups talks of in their Petition demonstrate the need and timeliness for change by this Court. It is in the public interest for the Court to get involved especially as there are Constitutional rights being violated and interfered with.

Petitioner respectfully asks the Court to reconsider her Petition and grant this Petition for Rehearing..

Respectfully submitted,

Vera Nigro
Petitioner, Pro Se
c/o 43 Courage Lane
Stafford, VA 22554
Msg. Svc/Fax (703) 221-0211

CERTIFICATE OF GOOD FAITH

Petitioner, hereby certifies pursuant to the Rules of the Supreme Court of the United States specifically Rule 44, that the foregoing Petition for Rehearing, is about intervening circumstances of a substantial or controlling effect, or other substantial grounds not previously presented and was submitted in good faith and not for purpose of delay.

Respectfully submitted,

Vera Nigro
c/o 43 Courage Lane
Stafford, VA 22554
Msg. Svc/Fax (703) 221-0211

No. **02-1576**

IN THE

SUPREME COURT OF THE UNITED STATES

Vera Nigro, (Petitioner, Pro Se)
c/o 43 Courage Lane
Stafford Va. 22554
Msg. Svc./Fax (703) 221-0211

V.

Federal Labor Relations Authority, (Respondents)

PROOF OF SERVICE

I, Vera Nigro, declare, that on this date, of October 27, 2003, as required by Supreme Court Rule 29, I have served the enclosed/ foregoing **Petition for Rehearing**, on each party to the above proceeding or that parties counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, and ~~40~~ Booklet copies and the $ 200.00 Rehearing filing fee, were serviced, by HAND CARIER DELIVERY upon the Clerk of the U.S. Supreme Court on this 27 day of October, 2003 also. / EXTRA BOOKLET SIGNED.

Solicitor General of the United States (Mr. Olson)
Department of Justice, Room 5614
950 Pennsylvania Ave. N.W.
Washington D.C. 20530-0001

DAVID M. SMITH
FLRA
1400 K STREET, N.W.
WASHINGTON, D.C. 20424

I declare under penalty of perjury that the foregoing is true and correct

Executed on: October 27, 2003

Vera Nigro
Vera Nigro